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HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

Principles and guarantees for the protection of persons detained on grounds of mental ill-health or suffering from mental disorder

Report of the Secretary-General

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INTRODUCTION

1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, at its fortieth session in 1988, in its resolution 1988/28 of 1 September 1988, adopted the draft body of principles and guarantees for the protection of mentally ill persons and for the improvement of mental health care (E/CN.4/Sub.2/1988/23). In that resolution, the Sub-Commission recommended that the Commission on Human Rights request the Secretary-General to transmit the draft body of principles and guarantees to Governments, specialized agencies and non-governmental organizations for comments and suggestions.

2. The Commission on Human Rights, at its forty-fifth session in 1989, acting on the recommendation of the Sub-Commission, decided, by its resolution 1989/40 of 6 March 1989, to establish an open-ended working group of the Commission to examine, revise and simplify as necessary the draft body of principles and guarantees submitted by the Sub-Commission, with a view to submitting it to the Commission at its forty-sixth session. It invited all Governments, specialized agencies, in particular the World Health Organization, and non-governmental organizations to participate in this work and to consider including in their delegations to the working group persons with expertise in the legal and mental health fields. It requested the working group to meet for a period of two weeks before the forty-sixth session of the Commission.

3. In paragraph 6 of resolution 1989/40, the Secretary-General was requested to invite comments, for consideration by the working group, from Governments, specialized agencies and non-governmental organizations on the draft body of principles and guarantees as submitted by the Sub-Commission. The Secretary-General was further requested to circulate these comments to all Governments in advance of the session of the working group.

4. In its resolution 1989/76 of 24 May 1989, the Economic and Social Council authorized the meeting of an open-ended working group of the Commission. In addition, the Council requested the Secretary-General, on the basis of the comments received from Governments, specialized agencies and non-governmental organizations in response to paragraph 6 of Commission on Human Rights resolution 1989/40, to prepare a working paper showing the modifications that would be made to the existing draft body of principles and guarantees as a result of those comments.

5. The present document contains the comments received pursuant to paragraph 6 of Commission on Human Rights resolution 1989/40. The working paper showing the modifications that would be made to the existing draft body of principles and guarantees as a result of those comments will be before the open-ended working group in document E/CN.4/1990/WG.8/WP.1.

6. In May 1989, a note verbale was sent to all Governments requesting that they submit comments on the draft principles and guarantees. Requests for comments were also sent in May 1989 to specialized agencies and non-governmental organizations.

7. By 20 November 1989, substantial replies had been received from the Governments of Bahrain, Equatorial Guinea, Finland, the Netherlands, Spain, the United States of America, the United Kingdom of Great Britain and Northern Ireland and Venezuela.

8. The Governments of the Bahamas, Qatar and South Africa sent the texts of their relevant legislation. References to their national legislation were also made in replies by Finland, the Netherlands and the United Kingdom. The texts of those replies are available in the files of the Centre for Human Rights for consultation.

9. Replies have also been received from the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). The Friends World Committee for Consultation also sent comments.

I. GENERAL COMMENTS AND SUGGESTIONS

10. The Governments of Finland, the Netherlands, Spain, the United Kingdom of Great Britain and Northern Ireland and the United States of America commended the Sub-Commission for its work on the draft principles and guarantees. They regarded the elaboration of that draft as an important step in the protection of the rights of mentally ill persons.

11. In the view of Bahrain, the submitted draft was excellent and did not require any further revision. Other Governments, the United Nations Educational, Scientific and Cultural Organization and the Friends World Committee for Consultation offered some general, as well as specific comments and suggestions, bearing particularly on the question of the protection of the rights of persons detained on the grounds of mental ill-health or suffering from mental disorder.

12. The Netherlands Government believed that the principles and guarantees were mainly concerned with admission to psychiatric hospitals under civil law and not with compulsory admission at the order of a criminal court, subject to the responsibility of the Minister of Justice; as this was an entirely separate matter, the Netherlands felt that article 19 needed to be interpreted broadly.

13. The Government of the United States of America believed that the draft principles and guarantees, including annex A, should employ language that was stricly gender neutral.

14. The Friends World Committee for Consultation was also of the opinion that the language of the draft should be gender neutral.

II. COMMENTS AND PROPOSALS IN RESPECT OF PRINCIPLES AND GUARANTEES

A. TITLE

15. The United Kingdom noted that the principles and guarantees as drafted related primarily to the question of the protection of mentally ill persons, rather than to the improvement of mental health care, although of course one result of the protection of mentally ill persons might be the improvement of mental health care. In view of this, the United Kingdom believed that the

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title should be that given to the sessional working group, namely "Principles and guarantees for the protection of persons detained on the grounds of mental ill-health or suffering from mental disorder". If that wording caused confusion, the title might be worded as follows: "Principles and guarantees for the protection of persons suffering from mental disorder or detained on grounds of mental ill-health".

16. In the view of the Government of the United States, the title of the draft principles, as it appeared on page 5 of document E/CN.4/Sub.2/1988/23, should include the phrase "and for the improvement of mental health care". The addition of this phrase would bring the title into conformity with the title of the instrument as it appeared on page 3 of the same document.

B. APPLICATION

Article 1

17. Regarding article 1, no comments have been received.

C. DEFINITIONS AND USAGE

Article 2

18. With regard to article 2, Finland, the Netherlands and the United Kingdom viewed the definitions as too narrow. Finland noted that limiting the definition of a mental health facility to an establishment which as its primary function provided care and treatment for patients with mental illness might be misleading. The principle should also relate to those establishments which provided health care to such patients in addition to other patient categories. The Netherlands pointed out that the definition of mental illness was too detailed.

19. In the view of Spain, it was essential for the document to contain a clear glossary of the terms used, giving precise definitions of a number of concepts that were open to a wide variety of interpretations if they were not made absolutely plain. Spain further stated that definitions should be provided, inter alia, of the following terms: "treatment", "qualified mental health practitioner" and "person with a mental illness". Otherwise, if those terms were interpreted loosely, it would be impossible under subparagraph 8 of article 12 to administer any type of medication, even in an emergency, to an "involuntary patient" without his consent until an "independent authority", after examining "expert evidence" and making a full study of the treatment proposed by the practitioner treating the patient, had so authorized. Similarly, if the concept of "qualified mental health practitioner" was not clearly defined the ambiguity of the term would leave open the possibility that a practitioner without the proper training and knowledge might decide that a patient should be interned.

20. Furthermore Spain noted that a precise definition of "mental illness" was essential, particulary when the term was used in articles relating to forensic psychiatry, since, while subparagraph 1 of article 6 did state that "a diagnosis that a person has a mental illness shall be in accordance with internationally accepted medical standards", no indication whatsoever was given as to which of the different standards that had achieved a greater or lesser degree of international acceptance were referred to. That need was

admittedly recognized in article 2 of the draft, which offered an incomplete and ambiguous glossary of terms while at the same time referring to its provisional nature and stating that definitive definitions would have to be developed by "multidisciplinary experts concerned with mental health". But in any case, considering the fundamental importance of that aspect, it was suggested that the greatest possible attention should be devoted to preparing a detailed and coherent glossary.

21. The United Kingdom stated that it would prefer the reference to a "psychologist", in the definition of a "mental health practitioner", to read a "clinical psychologist". The definition of "mental illness", which, as the note to article 2 recognized, needed to be refined, should be expanded to cover the full range of mental disorder. The term "mental illness" was too limiting. Certain persons, although not suffering from "mental illness", suffered from other mental disorders. Those persons required the protection offered by the principles and guarantees. The term "mental illness" might be replaced by "mental disorder". That would, in addition, bring the terms in the text of the principles and guarantees into line with their title, if the title were "principles and guarantees for the protection of persons suffering from mental disorder or detained on grounds of mental ill-health".

22. The United States noted the appropriately broad definition of "mental health practitioner" and expressed the view that several other provisions of the draft principles that adopted narrower language, in particular, article 10, paragraph 3, should be brought into conformity with the article 2 definition.

23. The Friends World Committee for Consultation stated that the term "mentally ill person" was discriminatory and should be replaced by "a person with a mental illness".

D. FUNDAMENTAL FREEDOMS AND BASIC RIGHTS

Article 3

24. Finland considered that the freedoms and rights as listed in this article were of great importance for the welfare of the mentally ill in the community.

25. The United States stated that the draft principles should include an article dealing explicitly with the improvement of mental health care. Such an article could be based on language developed by the World Health Organization, contained in document E/CN.4/Sub.2/WG.3/WP.3, dated 11 August 1988, as follows:

> "All persons have the right to the best possible mental health care, which shall be part of the health, mental health, and social care system."

26. The United Kingdom proposed that the opening wording of paragraph 4 (a) should be amended to read "Subject to a decision of a court as to any incapacity or as otherwise provided by domestic law in relation to incapacity, ...". It further noted that it was not clear whether the rights

mentioned in paragraph 4 (b) and (c) were rights "defined" in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Those rights might flow from the rights contained in those instruments but that was different from saying that they were "defined" in those instruments.

27. UNESCO expressed the view that paragraph 2 of the article should not only be restricted to the right to protect from exploitation, abuse and degrading treatment but should also take into account the concepts used in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Paragraph 5 of article 3, was related to the appointment of a guardian to protect the interests of a person affected by mental illness. It might be appropriate to indicate that such a guardian could be held accountable to the court that had appointed him.

Article 4

28. In the view of the United Kingdom, this article appeared to place an absolute requirement on "the authorities" (which do not appear to be defined) to inform a patient in a form and language he could understand of his rights in accordance with the principles and guarantees and under domestic law. No exception was made here as regards a person who, because of his mental disorder, was incapable of understanding his rights.

29. Spain noted that the effective application of article 4 in cases of severe mental deficiency and some forms of dementia, among other disorders, seemed impossible in view of the limited reasoning ability of the patients concerned. Consequently, it was suggested that the article be amended so as to state that the obligatory informatiom referred to should be given provided the patient possessed a minimum degree of mental capacity.

Article 5

30. The Netherlands pointed out that in some respects article 5 went to extreme lengths to protect patients' rights. For example, under Dutch legislation, patients had a right to communicate freely by telephone, to receive visits and to move freely in and around the psychiatric hospital. In the Netherlands, those rights could be restricted only in accordance with the criteria stated in a bill currently before the Netherlands Parliament, which included the disturbance of order in the hospital (as described in the house rules) or the possibility of serious detrimental effects on the patient's health. Although restrictions could be placed on visiting, these must not apply to certain types of visitor, such as the lawyer who was acting as the patient's counsel and the Inspector of Public Health. The patient must enjoy freedom of correspondence. However, it must be possible for mail addressed to the patient or sent by him/her to be checked in the patient's presence for objects which might have been enclosed in it.

31. The United Kingdom stated that patients in that country did not have a right to demand to mix with other patients. That would not be possible where it was felt not to be in the best interests of either patient involved including situations where it was felt a patient was open to exploitation. In its opinion, article 5, paragraph 1, should therefore be qualified by words similar to those in article 5, paragraph 2: "limited only as strictly necessary in the interests of the health or safety of himself or others".

32. As regards paragraph 3 (c) of article 5, it was suggested by Venezuela that the final sentence should read "He shall be properly remunerated for any work done when such work results in earnings being paid to the administration of the establishment." The grounds for this proposal were that the conditions did not exist in developing countries for patients to be remunerated for all work carried out from the budgetary resources of the establishment itself.

33. The ILO noted that the aspect of the question which was of direct concern to it related to the vocational training and rehabilitation of mentally ill persons. Relevant ILO standards included the Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99); the Vocational Rehabilation and Employment (Disabled Persons) Convention, 1983 (No. 159) and Recommendation, 1983 (No. 168). This aspect was dealt with in article 5, paragraph 3 (b), of the draft.

34. The ILO further noted with interest that a reference was made in article 5, paragraph 4, of the draft to the Forced Labour Convention, 1930 (No. 29) in connection with any work to be done by patients in a mental health facility. It was suggested that the meaning of paragraph 4 could be made clearer by changing it to the following wording:

> "4. Every patient shall be free from forced labour, in accordance with the terms of the Forced Labour Convention, 1930 (No. 29)."

35. The Friends World Committee for Consultation suggested that in article 5, paragraph 3, the words "Where possible, every patient shall:" should be deleted and that subparagraphs (a), (b) and (c) should become (f), (g) and (h) of paragraph 2. Paragraph 4 would become paragraph 3.

Article 6

36. No comments have been made on this article.

E. TREATMENT

Article 7

37. Finland emphasized that the treatment in one's own community and the right to return to that community should be regarded as the basic principle of providing mental health care.

Articles 8 and 9

38. In the view of Finland, the principles in these articles were of great practical importance. There were, however, great difficulties in making sure that the mental health establishments had access to the same resources as any other health establishment. Therefore, it would be important to study in great detail what measures could be taken in order to give effect to those principles. As far as Finland was concerned, it had used an earmarked quota as a part of the annual National Health Plans in order to allocate resources for community-based mental health services in 1983-1989.

39. The Friends World Committee for Consultation suggested that in paragraph 1 (c) of article 9 the words "Appropriate medical care" should be replaced by "Appropriate professional care" and that in paragraph 1 (d) the words "Adequate and regular supplies of medication" should be replaced by "Adequate and regular treatment".

Article 10

40. The United Kingdom considered that amplification was needed in line with the language of, for example, article 12, paragraph 5, and article 15, paragraph 1 (b). Thus article 10, paragraph 1, would read:

> "Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's needs and the need to protect others."

41. The United States noted that in order for the language of this article to conform with the broad definition contained in article 2, paragraph 3 of article 10 should be amended to provide that:

> "Mental health knowledge and skills shall be employed only for diagnosis, therapy, and rehabilitation of the patient and shall never be abused by being employed for other purposes."

Article 11

42. With respect to article 11, the United States believed that language should be added making clear that medical practitioners should only administer medication of known or demonstrated efficacy.

43. In the view of Spain, the wording of article 11 would seem to exclude the administration of medication for diagnostic purposes, which was a possible procedure in medical practice.

F. CONSENT TO AND LIMITATIONS ON TREATMENT

Article 12

44. The United States noted that in order to obtain informed consent, mental health practitioners must provide adequate and understandable information to the patient of the sort specified in article 12, paragraph 2, as drafted. With respect to patients who, due to their mental illness, could not grant informed consent, mental health practitioners should be required to seek such consent from other individuals or institutions responsible for the well-being of the patient. With this in mind, the Government of the United States suggested that article 12, paragraph 2, be amended to provide:

> "Informed consent is consent obtained freely without threats or improper inducements, from patients with sufficient mental capacity, after the provision of adequate and understandable information. With respect to such patients, mental health practitioners should seek such consent after discussing with the patient, and with others of the patient's choice, the nature of the patient's mental illness, the nature, purpose and duration of the proposed treatment, the specific methods to be used in the course of such treatment, possible pain and discomfort,

possible risks, side-effects and expected benefits of such treatment, and alternative modes of treatment. With respect to patients who do not possess sufficient mental capacity to grant informed consent, mental health practitioners should seek such consent from individuals or institutions responsible for the well-being of the patient, such as guardians, relatives or courts, after provisions of the same information."

45. Finland pointed out that, logically, operations to change a patient's sexual gender in any form other than castration should also be included in a recommendation like the one contained in paragraph 3 of article 12.

46. The Netherlands considered that the consent referred to in article 12 would have to be given in writing.

47. In the view of the United Kingdom, paragraph 3 of this article might include a provision to the effect that, in certain cases, if the patient was not capable of understanding the nature of the treatment and was unable to give consent, the doctor should submit the matter for decision to an appropriate independent authority prescribed by law or to a court.

48. With respect to paragraph 3, UNESCO stated that, in the absence of the patient's informed consent, it did not seem enough for the decision to be entrusted only to an independent specialist authority. There should be provision for at least contradictory opinions.

49. The United Kingdom proposed the rewording of paragraph 4 of this article as follows:

"Adequate ethical and/or legal safeguards shall be established to protect the rights of voluntary or involuntary patients who may be unable to give informed consent to clinical trials and experimental treatments. For patients who are able to give informed consent, such trials and treatments shall only be carried out if such consent is given."

G. VOLUNTARY ADMISSION TO A MENTAL HEALTH FACILITY

Article 13

50. Finland noted that, though efforts had been made to avoid prejudice and stigma and to integrate mental health facilities with other health establishments, the provisions of this article might work to stimatize units providing care for the mentally ill. Therefore, the wording of this article should be reconsidered so as to prevent it from operating against those in need of care and proper treatment.

Article 14

51. Regarding this article, no comments have been received.

H. INVOLUNTARY ADMISSION TO A MENTAL HEALTH FACILITY

Article 15

52. According to the point of view of Finland, it might be reasonable to reconsider the wording of articles 15, 16 and 17 in order to make them less strict in terms of acknowledging different national traditions.

53. Finland felt that the procedure provided for in the articles was an expensive one, and other alternatives which could guarantee the same level of safety limits should be considered, especially keeping in mind the lack of resources in providing proper treatment facilities for the mentally ill all over the world.

54. Finland further noted that involuntary treatment of drug abusers in particular, as well as care of certain other patient groups (for example, the mentally handicapped) had common features with the involuntary treatment of mentally ill persons. The principles presented in the document therefore should be applied - at least in most instances - also in the care of patients other than the mentally ill against their will.

55. In the view of the Netherlands, the patient's interests alone were insufficient grounds for involuntary admission. Moreover, it must not be assumed too readily that a danger existed.

56. The United Kingdom stated that, in considering paragraph 1 of this article, the working group might wish to consider the wording of the Council of Europe's resolution R(83)2 concerning "the protection of persons suffering from mental disorder placed as involuntary patients" (article 3):

> "In the absence of any other means of giving the appropriate treament:
>
> (a) A patient may be placed in an establishment only when, by reason of his mental disorder, he represents a serious danger to himself or to other patients;
>
> (b) States may, however, provide that a patient may also be placed when, because of the serious nature of his mental disorder, the absence of placement would lead to a deterioration of his disorder or prevent the appropriate treatment being given to him."

57. The United Kingdom further proposed a rewording of the first sentence of paragraph 2 as follows: "Involuntary admission shall initially be for a specified period for the purpose of observation and preliminary treatment pending review ...".

58. The Friends World Committee for Consultation was of the view that paragraph 1 of this article should be redrafted to read:

> "A person shall be admitted to or retained in a mental health facility only if two mental health practitioners consider that there is an immediate or imminent likelihood that the person, because of ...".

59. It further suggested that paragraph 3 of the same article should be redrafted as follows:

> "For the purpose of this article the best interest of the person shall be assessed in accordance with what is best for the individual concerned."

I. REVIEW AND APPEAL

Article 16

60. Equatorial Guinea proposed the replacement, in the Spanish text of paragraph 4 of article 16, of the word "cumpliendo" by "dando" or "apreciando". It also considered it appropriate to insert in paragraph 5 of the article the words "after examining the patient" after the words "if satisfied".

61. The United States suggested that the language of paragraph 5 of this article ought to conform to the definition contained in article 2. Thus, paragraph 5 should be amended to provide:

> "At any time a patient may be discharged by an authorized mental health practitioner if the practioner is satisfied that conditions appropriate for discharge have been achieved."

62. The United Kingdom suggested the addition in paragraph 5 of the word "or review body" after "authorized mental health practitioner".

63. With reference to paragraph 5, Venezuela considered that the words "authorized mental health practitioner" might be a cause of confusion in countries in which the admission and discharge of the patient was a decision for a doctor. It therefore suggested that the paragraph in question should read:

> "At any time a patient may be discharged by an authorized physician if satisfied that the conditions for discharge are satisfied."

64. As to paragraph 6, the United Kingdom proposed that this paragraph should begin as follows:

> "A patient or his representative or any person whose rights or interests are affected shall have the right to appeal to a higher court or tribunal against a decision that the patient be admitted ...".

J. PROCEDURAL RIGHTS OF THE PATIENT

Article 17

65. The United Kingdom proposed the following amendment to the second sentence of paragraph 1:

> "If the patient does not himself secure such services and wishes to be represented, the review body shall appoint a lawyer or other qualified representative. The services of a lawyer or other qualified representative shall be free of charge to the patient unless his means are sufficient to contribute some or all of the costs of his representation."

66. For the reasons mentioned in paragraph 22 above, the United States suggested that paragraph 2 of this article should be amended to provide:

"The patient and his representative may request and produce to the review body and the authorities of the facility independent medical health reports and any other relevant evidence."

67. Equatorial Guinea considered that in paragraph 2 the word "and" after the words "The patient" should be altered to "and/or". It was also of the view that the cases in which the report might be produced and for what purposes should be indicated.

Article 18

68. The United Kingdom pointed out that in its country, access to a patient's medical records or summaries was allowed to a registered medical practitioner acting on behalf of the patient or former patient, but that patients themselves were not entitled to such access.

K. CRIMINAL PROCEEDINGS

Article 19

69. In the view of the Netherlands Government, the formulation of article 19 should be amended as follows. The stipulation that the articles of the draft body of principles should apply mutatis mutandis to "mentally ill offenders who are admitted to a mental health facility" should be open to an interpretation which permitted sufficient scope for deviation from the provisions of the articles of the draft body of principles with regard to this category. In the Netherlands, compulsory psychiatric care of offenders under an in-patient hospital order (which was a criminal penalty) was subject to the responsibility of the Minister of Justice. This meant that under certain circumstances it must be possible for patients' correspondence to be censored, that the criminal court which periodically decided whether the hospital order should be extended should act as a review body, that the Minister of Justice should decide whether a patient should be released during the period of validity of a hospital order and that in so doing the Minister should likewise act as a review body, and that patients should not be allowed to see all particulars concerning them.

Article 20

70. Equatorial Guinea pointed out that, in principle, it was quite dangerous to anticipate that persons who were not mentally ill could be admitted to mental health facilities. It was obvious, however, that persons suspected of suffering from mental illness could be admitted to such facilities.

71. The United States was of the view that article 20 should be clarified to specify that persons who were not mentally ill should not be admitted to mental health facilities.

72. Venezuela considered that it would be unethical to admit persons who were not mentally ill to mental health facilities. Article 20 was liable to cause confusion and should therefore be deleted.

L. REMEDIES

Articles 21 and 22

73. No comments have been received regarding these articles.

M. IMPLEMENTATION

Articles 23 and 24

74. Venezuela was of the view that consideration of this matter should not end with the adoption of these principles but that machinery should be established to monitor their implementation.

N. GUIDELINES ON CRIMINAL PROCEEDINGS (ARTICLE 19.2)

Annex A

75. The Government of the United States generally supported the present text of annex A. However, it suggested that the annex be amended so that most of the special protections and procedures would apply to persons with a "severe mental illness" as defined in article 2 of the draft principles, rather than to all persons suffering from any form of mental illness, however slight.

76. With regard to guideline III, paragraph 2, of annex A, the United States noted that persons accused of a crime, including the mentally ill, could not generally be compelled to testify against themselves. However, individuals, including some with minor mental illnesses, could be compelled to testify in other circumstances. In such circumstances, only those competent to testify should be compelled to do so.

77. The United States also felt that changes similar to those which it had proposed for other articles were needed in several paragraphs of annex A.

78. Spain stated that the provision or guarantee set out in guideline III, paragraph 2, raised serious doubt in view of its general nature, since there did not appear to be adequate clinical justification for applying it to all mental patients. The extensive bibilography in the field of forensic psychiatry clearly defined, among other important issues, to what type of patient this article should apply and which patients were sufficiently competent to make statements before the court authorities.

79. The United Kingdom suggested that guideline IX would read better as follows:

> "A convicted prisoner afflicted by mental illness shall be provided with adequate mental health care and treatment and shall be transferred from prison to an ordinary mental health facility if adequate mental care and treatment and an appropriate special place is not available in the prison but only for the time necessary."

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Report of the Secretary-General

Addendum

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SWEDEN

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1. The General Assembly of the United Nations adopted by its resolution 43/173 of 9 December 1988 the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. That body of principles applies to the protection of all detained or imprisoned persons, including persons deprived of their liberty on the ground of mental illness. It is therefore important to carefully compare the present draft with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment in order that the draft be consistent with existing standards and that unnecessary repetition be avoided. For the same reasons, it is important to compare the draft text with the standards laid down in the Declaration on the Rights of Disabled Persons.

2. The draft principles seem to be based on a model of control which is different from the one applied in Sweden. The Swedish system of control is based on the supervision of the medical personnel by disciplinary boards and by courts. The general penal system is of course applicable also in this field. In addition, the medical profession has its own ethical rules. For these reasons the approach chosen in the draft principles does not entirely correspond to the Swedish system. This is the background against which the specific comments below on different articles of the draft should be seen.

3. Article 3. The wording of paragraph 4 seems to indicate, a contrario, that a court decision on incapacity could deprive a person of his/her right to exercise any civil, political, economic, social and cultural rights. The paragraph must therefore be reformulated. All Swedish citizens who have reached 18 years of age have the right to vote. Mental disorder may thus never disqualify a person from the right to vote in Sweden.

4. Article 4. The right to oral and written information seems to be too extensive. It could for example be questioned whether written information always should have to be provided. The ability of the patient to understand any information must also be taken into account.

5. Article 5. Paragraph 2 puts such fundamental human rights as the right to practise one's religion or belief on equal footing with less fundamental rights such as the right to purchase items for daily living. This is not advisable. The limitations provided for in the chapeau of the paragraph are too wide as regards the fundamental human rights. The paragraph as it stands would therefore undermine these rights as laid down in existing human rights instruments.

6. The limitations provided for in the chapeau of paragraph 2 seem only to apply to the rights enumerated in that paragraph. A limitation of the patient's right to communicate may also be called for in the interests of the health or safety of the patient himself.

7. Article 9. The requirements in this article seem unrealistic when it comes to developing countries. An effective supervision of mental health facilities may be carried out without regular inspections of each facility. Paragraph 2 would thus seem too far-reaching.

8. Article 12. Paragraph 3. According to Swedish law the treatments referred to in this paragraph, with the exception of sterilization and castration in certain cases, might be applied without prior decision by an independent specialist authority. The National Board of Health and Welfare supervises medical treatment of patients in general. Cases of maltreatment are examined by a special disciplinary authority and, ultimately, by a court.

9. Paragraph 5. According to Swedish legislation, a patient might be subjected to such restraints as are necessary for the treatment. The criteria "to prevent immediate and imminent harm to the patient or others" seems too narrow.

10. Paragraph 8. Treatment referred to in this paragraph may, in Sweden, be given to a patient without his informed consent and without a determination made by an independent authority if such treatment is in the best interest of the patient according to the ethical standards of the mental health professions. The consent of the patient or his/her relatives is sought when it is deemed appropriate. Cases of emergency can be foreseen, where it is not feasible to have the appropriate treatment determined by an independent authority.

11. Paragraph 9. There is no requirement under Swedish law for a second professional opinion except in the case of involuntary admission to a mental health facility.

12. Article 15. Paragraph 1. In Sweden, the prerequisites for involuntary admission is not so directly linked to the likelihood that harm will be caused. The determining criteria for involuntary admission are the need for treatment and the consideration that such need might only be met by involuntary admission.

13. Paragraph 2. It might, in certain cases, be in the interest of the right to privacy of the patient that his/her family is not informed of the admission.

14. Article 16. Paragraph 5. In Sweden, a practitioner may not decide on the discharge in all cases. In some cases, a determination has to be made by a board or a court, for instance regarding offenders.

15. Paragraph 6. Under Swedish legislation a patient is not entitled to appeal to a higher court against any decision regarding the treatment. Neither may any interested person, not affected by the treatment, make a complaint.

16. Article 17. The procedural rights seem to be too extensive as to an absolute right to attend (para. 4) or to have a public hearing (para. 6).

17. Annex A. Swedish legislation in this area is not based on the theory of criminal responsibility. Therefore, a person who also suffers from mental illness may be convicted of a crime. Such a person may then be sentenced to treatment in a mental health facility. Such treatment is carried out in the same manner as for other patients suffering from mental illness.

For these reasons, Sweden cannot support the paragraphs based on the theory of criminal responsibility and ability to stand trial, especially under V, VI and VII of Annex A.

WORLD MEDICAL ASSOCIATION

[Original: FRENCH]
[20 November 1989]

1. For many years, we have been much concerned with the protection of the rights of the patient, a question on which we adopted a Declaration at Lisbon in 1981, the text of which is attached.

LISBON DECLARATION

THE RIGHTS OF THE PATIENT

Adopted unanimously by the 34th World Medical Assembly, Lisbon, Portugal, September/October 1981.

2. Given the possibility of practical, ethical or legal difficulties, a physician must always act according to his conscience and in the best interest of the patient. This Declaration embodies some of the main rights which the medical profession believes should be enjoyed by patients.

3. Where legislation or Government action denies the patient these rights, physicians have an obligation to seek appropriate means of upholding or restoring them:

(a) the patient has the right to the free choice of a physician;

(b) the patient has the right to be treated by a physician free to take a clinical and ethical decision without any outside interference;

(c) after being properly informed of the treatment proposed, the patient has the right to accept or refuse it;

(d) the patient has the right to expect his physician to respect the confidential nature of all medical and personal information concerning him;

(e) the patient has the right to die in dignity;

(f) the patient has the right to receive or refuse spiritual and moral aid, including that of a minister of an appropriate religion.

WORLD PSYCHIATRIC ASSOCIATION (WPA)

[Original: ENGLISH]
[20 November 1989]

1. The main substance of the report concerns section IV: Draft body of principles and guarantees for the protection of mentally ill persons and for the improvement of mental health care.

2. From the introduction, it is obvious that the draft principles have, to a considerable degree, been influenced by the WHO document - and hence the WPA's points of view. Passages are transferred in nearly the same wording from the WHO paper. Among other things, it is stated that the principles and guarantees, in particular, focus on the small minority of patients suffering from mental illness who need to be admitted involuntarily to a mental health facility. Furthermore, the large majority of people with mental illness who receive treatment are not admitted to a hospital. Of the small minority who require admission, most enter hospital on a voluntary basis. Only a few require involuntary hospitalization. The importance of sufficient resources is stressed.

3. The draft principles still represent "minimum United Nations standards for protection of fundamental freedoms and human and legal rights of mentally ill persons". Governments should consider adapting their laws, if necessary, to the body of principles and guarantees, or should adopt provisions in accordance with them, when introducing new relevant legislation.

4. The following articles are not in accordance with this preamble, leaving an impression of inconsistency in the report.

The articles

Articles 1 and 3.5

5. The articles mostly deal with human rights in general and the application for mental patients in particular. Some articles are transferred from the Daes Report (latest revision August 1987). These articles can probably be generally accepted, even if they may convey a tinge of legalistic and suspicious approach to psychiatry, as if every psychiatric patient is in need of special protection.

6. If important matters are covered satisfactorily in international documents on human rights, it should be sufficient to refer to these documents in the preamble and to quote the relevant provisions. So it has been done in the WHO document (E/CN.4/Sub.2/1988/66). Reference could be made in particular to the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, cf. article 3.4. A simplification could be expedient.

Article 2

7. The definitions of article 2 correspond, to a wide extent, to the WHO proposals - e.g., the decisive definition of "severe mental illness" used in article 15 on involuntary admission. It is noted that there is no definition

of "harm" - a key concept of article 15. The tone of the article seems to indicate that the definitions set out are for the purpose of the articles and are not intended to be for universal application.

8. Only a difference of degree is found between "mental illness" and "severe mental illness". Even the definition of "mental illness" corresponds grossly to the psychiatric concept of "psychosis" or to cases in the borderland of psychosis. Disturbance of reality is decisive in the concept of psychosis.

9. In this way, categories of non-psychotic patients apparently are excluded from admission to mental health facilities, cf. in particular article 13 on voluntary admission, although article 20 seems to hint that persons who are not mentally ill may be admitted. Considering the difficulties and differences of definitions, the WPA has previously suggested that each country should provide in its law a specific definition and an attempt to rationalize it, taking into account the key protection, which here is laid down in the following article 6.

Article 3

10. It seems to be an example of the apparent assumption that a patient does not stay in a mental health facility, unless he is forced to. The article does not correspond to the situation of the vast majority of patients in mental health facilities, namely, voluntary patients, whose freedom and rights are intact. 3.2 is a proposal of discrimination of the mentally ill. 3.3 is a proposal against discrimination of the mentally ill.

Article 4

11. The article is not in concordance with the assumption that voluntarily admitted patients have the same rights as patients with any other illness.

Articles 7-11

12. Article 7 is remarkably encouraging community psychiatry in accordance with an internationally accepted trend in psychiatric care and with the mental programmes of WHO.

13. A suspicious attitude appears again, for instance in article 8.2 and article 11.1. So the tendency of extensive control is underlined corresponding to the impression that a stay in a psychiatric institution is at any time unwanted.

14. The latest WHO document (E/CN.4/Sub.2/1988/66) has treated the subject in a more simple way, namely superior guidelines and no detailed specification.

Article 12

15. It is reasonable that the principle of informed consent is underlined with the inevitable exception in emergencies. The same principles are laid down in the WHO paper in a more simple manner, and the article appears rather complicated and bureaucratic.

16. A distinction is apparently made between incompetent and competent patients. The decision of an independent authority in case of non-urgent treatment of incompetent patients, unable to consent, is hardly compatible with adequate psychiatric practice and marks an undesirable degree of legal control (article 12.8).

17. It should be recognized that the provisions imply possible conflict where a patient may be admitted involuntarily in accordance with article 15, but not treated - which was the purpose of the admission. It is noted that the article includes acceptable provisions on physical restraint and on clinical trials and experimental treatment. No trials or experimental treatment should be carried out on patients involuntarily, irrespective of voluntary or involuntary hospitalization. In the United States, research is forbidden on any subject deprived of personal liberty.

Article 13

18. The article is - as it now stands - a combination of the WHO proposal and the Daes articles. 13.1 and 13.2 have nearly the same wording as the WHO document, whereas 13.3 is just slightly changed from the original Daes article. This very important provision still seems to reflect an attitude and an apprehension of a psychiatric department as some kind of prison. It is a strain being a psychiatric patient, but admission is worse! It might deter a patient from seeking the mental health facility, and the possibility of self-referral is not included. A citizen should find it as natural to apply for help in the psychiatric ward as in the emergency room of a general hospital. A remarkable contradiction exists between 13.1 and 13.2 on the one hand and 13.3 on the other.

19. The possibility of voluntary admission is - as mentioned above in article 2 - restricted to patients suffering from "mental illness", which excludes some non-psychotic patients, who are "likely to benefit from admission for care and treatment". Furthermore, patients who do not understand the purpose of admission, i.e. non-protesting, incompetent patients may not be admitted voluntarily. These persons should, according to some legislations, be treated as voluntary, informal patients in order to avoid the stigma and possible legal consequences of involuntary admission, comparing their situation with that of somatic patients.

20. The WPA is still of the opinion that it should be sufficient to state that a patient can be admitted to a mental health facility by a medical practitioner or he can address himself to the facility and ask for assistance. Nor is it necessary to define such a psychiatric patient. Article 13.3 discriminates against persons who suffer from mental illness. The article should be deleted - or, at least, radically changed. Article 13.4 has no specific meaning, and should be deleted.

Article 15

21. Article 15.1 is transferred unchanged from the WHO proposal (which again is in agreement with the WPA points of view).

22. The concept of "harm" is not defined in article 2. The WHO paper suggests this definition: "A physical or a psychological harm or injury." The term "harm" is broader than the term "danger" and does not imply physical violence

to the same extent as "danger". Following this, it must be assumed that the indication of urgent treatment is maintained, because given the patient's severe mental illness, "the omission of admission for treatment would lead to a considerable deterioration of his condition". The WPA has previously stressed the necessity of involuntary admission on account of "urgent treatment" of a severely mentally ill person who refuses treatment. This is the case mostly with paranoid and manic patients who may not be evaluated as "really" dangerous and yet may be in need of treatment.

23. The concept of "severe mental illness" - as defined in article 2 - fits into the context here. It is appropriate to underline involuntary admission as ultimum refugium and the principle of the least restrictive alternative.

24. It should be noted that a "mental health practitioner" - as in article 13 - is entitled to certify an involuntary admission (cf. the definition in article 2). In many countries, this access is restricted to "authorized medical practitioners". The procedure indicated in the article does not seem to be opposed to the WHO proposal, but is more elaborate. The definition in article 15.3 of the "best interests" is in accordance with the proposal of the WHO draft.

Article 16

25. This article on review and appeal is in agreement with the principle suggested by WHO and the WPA. The necessity for the deprivation of liberty shall be reviewed at regular and fixed intervals as described by national law. It is appropriate to state the superior principles and then refer to national legislation considering the different systems of the individual countries. So it is reasonable that only the final decision to admit or detain a patient in a mental health facility shall be taken by a review body, which might be a court or other impartial body, cf. article 15.

26. Article 16.5: It is remarkable that an authorized mental health practitioner (in the sense of the definition of article 2) may discharge a patient if satisfied that the medical conditions for discharge are satisfied. So, for instance, a psychologist is entitled to judge medical conditions in this difficult situation.

Articles 17 and 18

27. These articles on the procedural rights of the patient are - as were the Daes articles - more elaborate than the WHO proposals. The provisions appear as a legalistic repetition of a person's rights in connection with a court hearing. It must be the assumption that article 17 is referring to the involuntary patient and article 18 to all patients, but it is not pointed out.

28. The access to records and other papers is still a controversial subject, but the necessary exceptions are indicated. It is noted that the patient and his representative are entitled to "an independent medical report and any other relevant evidence". It is difficult to foresee how such a controlling procedure will work in practice.

Article 19

29. WHO and the WPA have proposed that the principles for treatment in the articles should be applied to mentally ill offenders to the widest possible extent. Article 19.2 preserves the original Daes articles on criminal proceedings as the "guidelines" of Annex A. Apparently, the working group had not revised these articles at the meeting in August 1988.

30. It should be remembered that the section on criminal proceedings is transferred nearly unchanged from the so-called Siracusa guidelines of 1981 (the International Association of Penal Law and the International Commission of Jurists). It seems to be rooted in the tradition of the English-speaking countries with regard to procedures and concepts. It has been indicated by the WPA and several member countries that it might be difficult to adapt these provisions to national legislation and tradition outside the anglophone system, even if they are formulated in general terms. The guidelines do not conform to the penal law procedure in various countries. There is a wide variation in the definitions, treatment and criminal procedures among different countries, and conflicts with national legislation must particularly be envisaged within this field. Thus, reasonable doubt has been expressed whether this United Nations instrument should at all include a section concerning mentally abnormal offenders. The question has not yet been thoroughly discussed.

31. If the body of principles should include provisions on criminal proceedings, it is worth considering whether these articles should be simplified in such a way that specific procedures and concepts are avoided.

Minors

32. The Daes report had a few articles on minors, but the final resolution of these problems was postponed in 1984 by the United Nations working group. The present Palley report does not deal with this very intricate problem. At any rate, it ought to be resolved whether the principles and guarantees should include a section on minors.

Article 20

33. The impact of this article is difficult to interpret, as the instrument is otherwise reserved for patients with "mental illness" or "severe mental illness" as defined in article 2.

Articles 21 to 24

34. These articles on remedies and implementation are in principle in agreement with the previous Daes articles and the WHO document. Article 21 adds other safeguards for every mentally ill person. Article 21.2 ought to be reformulated to avoid complaints of obviously psychotic nature. The new article 22 suggests a "multi-disciplinary commission" to control the psychiatric field. Finally, article 23 repeats the purpose of the principles and guarantees. Article 24 is a new formulation, which undoubtedly will find general acceptance.

November 1989
Hans Adserballe, WPA Ethics Committee
Fini Schulsinger, Secretary-General
Costas Stefanis, President

PROPOSALS FOR NEW BASIC ARTICLES

1. Health legislation should provide for adequate and effective treatment for all patients, including psychiatric patients, and safeguard their right to treatment in or outside institutions of an acceptable standard. There should be no discrimination of psychiatric patients in this context. Psychiatry should be integrated in the health care system.

Voluntary treatment

2. Access to voluntary treatment shall not be administered differently from access to treatment of physical illness. A patient, who voluntarily is admitted to a mental health facility or addresses himself and asks for assistance, shall be protected by the same legal safeguards and ethical rules as patients with any other type of illness.

Involuntary treatment

3. Involuntary treatment is a great infringement of the human rights and the fundamental freedom of the patient, and therefore a patient shall be admitted to a mental health facility as an involuntary patient only if:

A. (1) An authorized medical practitioner states, after a personal examination, that the patient, because of severe mental illness, */ is likely to cause serious harm to himself and/or others;

(2) Or if, because of the patient's severe mental illness, the omission of admission for treatment would lead to a considerable deterioration of his condition.

B. The patient refuses voluntary admission for treatment, which cannot be carried out by any other means in accordance with the least restrictive principle.

4. National legislation shall provide for directions with regard to: which kind of persons are authorized to request an involuntary admission, and which organization is authorized to carry out the physical force that may be necessary for the implementation of the involuntary admission.

5. The final decision to admit or detain a patient in a mental health facility as an involuntary patient shall be taken only by a court or a competent independent body prescribed by law - and only after appropriate preparation and proper hearing. The patient shall be informed of his rights. The patient has the right of appeal and to be heard personally by the judge or the body.

6. The lawful necessity for the deprivation of liberty shall be reviewed at regular and fixed intervals as prescribed by national law.

7. A patient, who is deprived of his liberty, shall have the right to a qualified guardian or counsel to protect his interests.

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*/ See definition.

8. A patient, who is deprived of his liberty, has the need and right to be treated under the same professional, environmental and ethical conditions as any other ill person. In particular, he has the right to receive appropriate treatment and care in accordance with the highest available standards. Thus, national legislation shall provide for guidelines for the appropriate physical setting and the staff of the wards, in which involuntary hospitalization takes place. Such guidelines must serve the patient's need for privacy as well as contact with mental health professionals, and also the patient's need for physical activity and meaningful occupation.

The criminal mentally ill patient

9. The principles for treatment, as outlined in articles 3 to 8, should be applied to the widest possible extent to mentally ill offenders who are sentenced to involuntary treatment.

Proposals for definitions

"Patient" (involuntary treatment): A person suffering from severe mental illness.

Voluntary treatment: No definition is necessary (cf. Proposal for New Basic Articles 1 and 2).

"Mental health facility": Any establishment or unit of an establishment, which as its primary function has the care and treatment of patients, suffering from severe mental illness.

"Severe mental illness": A substantial disturbance of thought, mood, perception, orientation or memory, which grossly impairs judgement, behaviour, and capacity to recognize reality, and which may require involuntary treatment.

(A diagnosis of severe mental illness shall be determined in accordance with internationally accepted medical standards. Physicians, in determining whether a person is suffering from mental illness, should do so in accordance with medical science. Difficulty in adapting to moral, social, political, or other values, in itself should not be considered a mental illness.)

"Harm": The term covers not only the case where the danger is immediately evident, but also where there is a serious possibility of injury being caused to the patient himself or to another person. This makes it possible to take an appropriate decision in cases where, although the mental illness does not obviously reflect harmful behaviour, the physician has every reason to believe that injury to persons may be caused.

Position statement on the rights and legal safeguards of the mentally ill

(Adopted by the WPA General Assembly in Athens, 17 October 1989)

Preamble

The present WPA Executive Committee has been involved in several contexts with the rights and legal safeguards of the mentally ill.

The EC has been assisted very productively by members of the WPA Ethics Committee, not least by its co-ordinator, Dr. Hans Adserballe.

The following is a catalogue of the main viewpoints which the WPA has tried to promote, especially in the work with the Daes-Palley Report.

Position statement

Persons suffering from mental illness shall enjoy the same human rights and fundamental freedoms as all other citizens. They shall not be the subject of discrimination on grounds of mental illness.

Mentally ill persons have the right to professional, humane and dignified treatment. They shall be protected from exploitation, abuse and degradation, in accordance with the ethical standards of the Declaration of Hawaii, revised and approved by the General Assembly of the World Psychiatric Association in Vienna, 1983.

The World Psychiatric Association adheres to the general principles outlined in the Declaration of Hawaii, which clearly specifies the minimal requirement for ethical standards of the psychiatric profession. The Declaration of Hawaii states that the aim of psychiatry is to treat mental illness and to promote mental health. It denounces abuse of psychiatry in all respects and emphasizes that the psychiatrist shall serve the best interests of the patient, consistent with accepted scientific knowledge and ethical principles.

Health legislation shall provide for adequate and effective treatment of all patients, including psychiatric patients, and safeguard their right to treatment in or outside institutions of an acceptable standard. There shall be no discrimination of psychiatric patients in this context. Wherever possible, psychiatric services shall be integrated into the health and social care system. All patients shall be treated and cared for, as far as possible, in the community where they live.

Psychiatric patients should, as a principle, be treated along the same lines as other patients, favoured by the fact that the great majority of patients may be treated informally and voluntarily in out-patients facilities without hospitalization.

Voluntary treatment should be encouraged, and access to voluntary treatment should not be administered differently from access to treatment of physical illness. Patients, who are voluntarily admitted to a mental health facility or apply for assistance, shall be protected by the same legal safeguards and ethical rules as patients with any other type of illness.

Involuntary intervention is a great infringement of the human rights and the fundamental freedom of a patient. Therefore, specific and carefully defined criteria and safeguards are needed for such intervention. Hospitalization or treatment against the will of a patient should not be carried out, unless the patient suffers from serious mental illness. Involuntary intervention must be carried out in accordance with the least restrictive principle.

A diagnosis that a person is mentally ill shall be determined in accordance with the internationally accepted medical standards. Physicians, in determining whether a person is suffering from mental illness, should do so in accordance with medical science.

The seriousness of the mental illness and the seriousness of the harm that the patient may cause himself and/or others shall be determined by definition in national legislation.

Difficulty in adapting to moral, social, political, or other values, in itself should not be considered a mental illness.

National legislation shall provide directions with regard to which kind of persons are authorized to request an involuntary admission, and which body is authorized to carry out the physical force that may be necessary for the implementation of the involuntary intervention.

The final decision to admit or detain a patient in a mental health facility as an involuntary patient shall be taken only by a court or a competent independent body prescribed by law - and only after appropriate preparation and proper hearing.

Patients shall be fully informed of their treatment and rights. They have the right of appeal and to be heard personally by the court or competent body.

The necessity for the deprivation of liberty shall be reviewed at regular and fixed intervals as prescribed by national law.

Patients, who are deprived of their liberty, shall have the right to a qualified guardian or counsel to protect their interests.

Clinical trials and experimental treatments shall never be carried out on patients involuntarily hospitalized.

Patients have the right to receive appropriate treatment and care in accordance with the highest available standards. The quality of treatment also depends on appropriate physical settings, staff and resources.

Patients deprived of their liberty shall have the right to free communication, limited only as strictly necessary in the interests of the health or safety of themselves or others.

The principles set out in these articles shall to the widest possible extent apply to mentally ill offenders, who are admitted to a mental health facility.

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COMMISSION ON HUMAN RIGHTS
Forty-sixth session
Item 15 of the provisional agenda

HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

Principles and guarantees for the protection of persons detained on grounds of mental ill-health or suffering from mental disorder

Report of the Secretary-General

Addendum

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World Association for Psychosocial Rehabilitation 14

GE.90-10013/1420B

AUSTRALIA

[Original: English]
[4 December 1989]

Gender-neutral terminology

1. The draft principles at present are not in consistently gender-neutral form. In accordance with standard United Nations usage all references to "he", "him" or "his" should be amended to include "she" or "her" or otherwise re-drafted to be gender neutral. In this respect the following provisions require attention: Articles 3.4 (b), 3.4 (c), 3.5, 4, 5.2, 5.2 (a), 5.2 (d), 5.3 (c), 6.3, 7.1, 7.2, 12.1, 12.2, 12.3 (a), 12.7, 12.8, 14, 15.1 (a), 15.3, 16.3, 16.6, 17.1, 17.2, 17.3, 17.4, 17.5, 17.6, 17.7, 18, and 21.2; and Guidelines I.3, IV, V.2, VI, VII.1, VII.2, VIII.1, X.

Title of the principles

2. In current documentation available to Australia, the title of the draft principles and guarantees does not appear to be settled. Australia seeks an indication as to the currently preferred title (specifically, whether the words "and for the improvement of Mental Health Care" are included).

Article 1: Application without discrimination

3. The article lists a number of impermissible grounds of discrimination in the application of recognized rights. This list includes all the specific grounds of discrimination mentioned in the equivalent article of the International Covenant on Civil and Political Rights (art. 2.1), and "age". Australia doubts that the phrase "or other status" in such a non-discrimination clause is an effective catch-all so as to cover all grounds of invidious discrimination not specifically listed. Thus the approach taken in this article of the draft principles may be seen to result in a purportedly exhaustive list of prohibited grounds of discrimination, i.e., "without discrimination on grounds of ...". Article 2.1 of the Covenant by contrast, makes clear that the list of specific grounds is not exhaustive and that there is a general requirement of non-discrimination in the application of recognized rights, i.e., "without distinction of any kind, such as ...". In Australia's view, this approach is to be preferred. The relevant part of this article should therefore read:

> "without discrimination of any kind, including on grounds of race (etc.) ...".

4. Article 1 also states that the principles and guarantees are to be applied to "all mentally ill persons". However, article 6 deals with protection of persons from unjustified classification as mentally ill. The intended application of the draft is therefore <u>not</u> entirely restricted to people who are in fact "mentally ill persons". This problem could be dealt with either by omitting the words "to all mentally ill persons" so that the article reads:

> **"These Principles and Guarantees shall be applied without discrimination ..."**

or by adding words to extend the application of the Principles, e.g.:

> "These Principles and Guarantees shall be applied to all mentally ill persons and in all cases concerning mental illness or mental health, without discrimination ...".

Article 2: Definitions

5. The note on the definition of mental illness does not make clear whether the "more detailed definitions ... to be developed in collaboration with multidisciplinary experts concerned with mental health" are to be elaborated at the international level, and if so whether this is envisaged as occurring within the United Nations system, or whether the reference is to development of definitions for the purposes of national legislation.

6. The list of persons included in the definition of "mental health practitioner", although admittedly non-exhaustive, could usefully include a specific reference to psychiatrists.

Article 3: Fundamental freedoms and basic rights

7. In Australia's view, it would be preferable for this article to contain, and preferably begin with, a clear statement that mentally ill persons have the same fundamental rights as all other human beings. (The provision in article 3.4 on capacity to exercise rights is regarded as having a distinct purpose.) The Declaration on the Rights of Disabled Persons and the Declaration on the Rights of Mentally Retarded Persons contain similar provisions (principle 3 and principle 1 respectively). Opening this article with such a provision would avoid the danger which may arise from the present drafting that the particular rights set out may be emphasized at the expense of the rights which mentally ill persons have in common with all other human beings, including those recognized in the United Nations human rights Covenants.

8. Article 3.3 states simply that "There shall be no discrimination on the grounds of mental illness". Existing United Nations instruments address the issue of discrimination in more detail. In particular, they specify both an obligation for States themselves to refrain from discrimination, and an obligation to provide protection against discrimination - e.g., articles 2.1 and 26 of the International Covenant on Civil and Political Rights. Principle 10 of the Declaration on the Rights of Disabled Persons similarly contains a positive requirement of protection against discriminatory treatment, rather than simply stating that "there shall be no discrimination". This article of the draft principles should therefore, in addition to the existing statement, include specific provision that (a) States shall refrain from discrimination on the grounds of mental illness; and (b) States shall ensure effective protection against discrimination on the grounds of mental illness.

9. In relation to article 3.4, whilst it is necessary to provide the maximum protection against abuse of any provision for limitation of rights, the present form of this provision is not considered appropriate and seriously limits the applicability of the draft principles to Australian circumstances. For example, the statement that a decision as to any incapacity must be made by a court appears unnecessarily restrictive. In particular, it appears

inconsistent with recent legislative initiatives in some Australian States which make provision for decisions to be made by specialist non-judicial tribunals. These initiatives appear to offer more accessible and effective protection than reliance on the courts alone.

10. In addition, no definition of "incapacity" in this context is provided in the current text.

11. The relation between article 3.5 providing for appointment of a guardian, and other articles dealing with treatment and hospitalization, is not clear - e.g., what matters are envisaged as being within the authority of a guardian?

Article 4: Information on rights

12. This article refers to information being in a form and language which the person "can understand". Article 14.3 (a) of the International Covenant on Civil and Political Rights dealing with the right of an accused person to be informed of the charges refers to a language the person "understands". The United Nations "Nettel" Principles for the Protection of Persons under Any Form of Detention or Imprisonment similarly requires information to be given in a language which the person "understands" (principle 14). Using the word "understands" appears preferable since it implies an obligation on the authorities to ensure that the information is actually understood.

13. The Nettel Principles also require that any person subjected to any form of detention should be provided at the commencement of detention or promptly thereafter with "information on and an explanation of his rights and how to avail himself of such rights" (principle 13). Although the present principles require information on rights to be given in an understandable form, in Australia's view this may not be as effective as an explicit requirement of an explanation of those rights and how they may be availed of. It is suggested that the article should therefore be amended to include the words underlined above. This article could also usefully include express provision for the provision of an interpreter or other communications specialist if warranted by the circumstances.

14. Australia also notes that there is no definition of which "authorities" are responsible for providing the information to the patient.

15. This article refers to information on rights being provided only in the situation where a person is a patient in a mental health facility. Some other human rights instruments contain more general provisions on dissemination of information. The Declaration on the Rights of Disabled Persons (principle 13) states that:

> "Disabled persons, their families and communities shall be fully informed, by all appropriate means, of the rights contained in this Declaration."

16. A comparable provision would be appropriate in these principles, particularly in view of the statement in the introduction (E/CN.4/Sub.2/1988/23, p. 4) that:

> "These Principles and Guarantees are intended to serve, inter alia, as a guide to Governments, specialized agencies, national, regional and international organizations, competent non-governmental organizations and

individuals and to stimulate a constant endeavour to overcome economic and other practical difficulties in the way of their adoption and application".

17. Australia proposes that a general dissemination provision should be made the subject of an additional provision separate from the present article 4.

Article 5: Rights of patients in mental health facilities

18. Article 5.3 states in subparagraphs (a) and (b) that facilities for reading, recreation, sport, education, and vocational training are to be enjoyed "where possible".

19. The International Covenant on Economic, Social and Cultural Rights requires each party to take steps "to the maximum of its available resources" for the progressive realization of these rights (art. 2.1). Australia suggests that this latter formulation would be the more appropriate means of recognizing resource constraints without lowering existing standards, where it is deemed desirable to give such recognition.

20. Limitations on access to facilities which are necessary due to a person's condition could be related to more definite criteria than simply what is "possible". The limitation clause used in the preceding paragraph may be appropriate. Paragraph 3 might thus be reworded to begin as follows:

"Limited only as strictly necessary in the interests of the health or safety of the patient or others, ...".

21. The right to be adequately remunerated for any work done is not subject in the present draft to the limitation to what is "possible". To avoid this right being subjected to any limitation clause inserted as discussed above, Ausralia proposes that this right be relocated as a separate subparagraph in article 5.4.

22. Article 5.4 states that "every patient, subject to paragraph 3 (c) above and to the Forced Labour Convention, shall be free from forced labour". In Australia's view, this provision should be redrafted.

23. The words "subject to paragraph 3 (c) above and to the Forced Labour Convention" threaten to undermine the protection against forced labour which this article is presumably intended to provide, and instead may suggest that some forms of forced labour for mentally ill persons are legitimate or even recommended.

24. The words "subject to paragraph 3 (c) above" imply that the encouragement to be given to "active occupation", "training" and "work" referred to in paragraph 3 (c) may include forced labour.

25. The Forced Labour Convention provides that all forced labour is to be abolished, but permits certain forms as a transitional measure. Given that this Convention is now some 60 years old, Australia takes the view that any current standard setting should proceed on the basis that the transitional period is not to be further prolonged. The effect of making the prohibition of forced labour for mentally ill persons "subject to the Forced Labour Convention", however, may give some legitimacy to the application of these "transitional" measures to mentally ill persons.

26. The Forced Labour Convention excludes certain categories of forced labour from its definition of forced labour. The effect of making the prohibition of forced labour for mentally ill persons "subject to the Forced Labour Convention" will be to incorporate these exclusions into the definition of forced labour for the purposes of the principles. These exclusions include military service, and work or service exacted pursuant to a conviction in a court of law.

27. The United Nations Standard Minimum Rules for the Treatment of Prisoners state that requirement of prisoners to work is to be subject to an assessment of mental fitness (rule 71.1). While the Standard Minimum Rules do not explicitly provide that mentally ill persons are not to be required to work, they do require that such persons shall be treated in specialized institutions under medical management (rule 82.2), i.e., that general prison conditions, including general provisions as to work, are not applicable. If the draft principles are to endorse the application of enforced work for prisoners with mental illnesses, Australia takes the position that much more detailed regulation would be required than is provided in the present draft.

28. For the foregoing reasons, Australia proposes that the reference to the Forced Labour Convention should be deleted. It is suggested that the principles should simply state in this respect that "no mentally ill person shall be subjected to forced labour".

Article 6: Principles for diagnosis

29. Australia reserves the right to provide detailed criticism and comment on article 6 following a review being undertaken by its medical experts. While endorsing the intent of articles 6.3 and 6.4, Australia may propose an alternative formulation in the light of the aforementioned review.

Article 7: Treatment

30. It is suggested that article 7.1 should read "Every patient has the right to be ..." rather than "Every patient shall ..." in order to indicate that there is an option to be exercised by the patient.

Article 8: Standards of care

31. Article 8 refers to the right of mentally ill persons to equality with persons having other illnesses, but this is only with reference to standards of treatment, rather than to availability of treatment, which also needs to be guaranteed for mentally ill persons equally with persons with other illnesses.

32. The review by Australian medical experts may provide further material to be considered in the drafting of this provision.

Article 9: Standards of facilities and treatment

33. The requirement in article 9.1, that mental health facilities should have access to the same resources as any other health establishment "wherever possible", does not appear sufficiently definite (see Australia's comments on art. 5.3 above). It is assumed that article 8 (1)(a) prohibits lower standards of care for persons with mental illnesses than those available to persons with other illnesses. Further, article 9.1 could be inconsistent with

the non-discrimination requirements of the Covenant on Economic, Social and Cultural Rights, and, in the case of services provided by Government, with article 26 of the Covenant on Civil and Political Rights.

34. The review by Australian medical experts may provide further material to be considered in the drafting of this provision.

Article 10

35. The review by Australian medical experts may provide further material to be considered in the drafting of this provision.

Article 11

36. The review by Australian medical experts may provide further material to be considered in the drafting of this provision.

Article 12

37. Australia considers that the drafting of article 12.2 would be improved by reference to discussion "concerning the nature of his mental illness ...". The reference should also be to discussion with "other persons" of the patient's choice rather than "others", to avoid any implication that the "others" may only be other patients.

38. The reference in paragraph 12.3 (b) to review and approval of treatment by an "independent specialist authority as prescribed by law", would, in Australia's view, benefit from an express requirement that this authority be satisfied that the requirements of informed consent are fulfilled.

39. The review by Australian medical experts may provide further material to be considered in the drafting of this provision.

Article 13: Voluntary admission

40. Australia requests clarification of the level of obligation envisaged by the requirement in article 13.1 that "every effort" shall be made to enable persons with mental illness to be admitted voluntarily to mental health facilities. It is noted that the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to the highest attainable standard of mental health as a right (art. 12.1), albeit one to be realized progressively to the maximum of available resources (art. 2.1). Australia views voluntary admission for persons needing care as being, within this limitation, an internationally recognized right (see also Australia's comments on art. 8).

41. In some legal systems, including some Australian jurisdictions, "voluntary" admission is presently regarded as including admission without the person's own consent but with the consent of a guardian. Australia seeks clarification whether this approach is regarded as permissible, and, if so, with what safeguards.

42. With regard to article 13.2, Australia proposes that the phrase "in the same way as access for any other illness" should read "in the same way as access for any other facility for any other illness".

43. The review by Australian medical experts may provide further material to be considered in the drafting of this provision.

Article 15: Involuntary admission

44. Article 15.1 requires an immediate or imminent likelihood that a person will cause harm to self or others, and that this be due to a "severe" mental illness. This requirement is to be applied to persons who either refuse or are unable to consent to being admitted voluntarily for treatment.

45. In the case of persons capable of refusing treatment, these restrictive conditions on involuntary admission are consistent with, and in Australia's view required by, the right to liberty of the person and to freedom from arbitrary detention (art. 9.1 of the Covenant on Civil and Political Rights).

46. Australia proposes, however, that the position of persons lacking capacity either to consent or to refuse should be addressed separately. While these persons also have the right to liberty of the person and freedom from arbitrary detention, they equally have the right to "the highest attainable standard of physical and mental health" (art 12.1 of the Covenant on Economic, Social and Cultural Rights). It is necessary that effective enjoyment of both these rights should be protected and should not be prevented by a person's lack of capacity.

47. The provisions as presently drafted do not appear to give adequate protection to either of these rights. Requiring an imminent likelihood of "serious" harm to self or others, as a result of "severe" mental illness (neither standard being defined) appears to exclude the possibility of treatment in other circumstances for people lacking capacity to make their own decision - so that a person who suffers significantly diminished quality of life because of a mental illness, but is not likely to cause imminent "serious" harm to self or others, and lacks capacity to consent to treatment, will not be able to be treated. Conversely, the present draft of this provision gives inadequate attention to the question of capacity and how it is to be determined, which is crucial to the protection of the right to freedom from arbitrary detention. The phrase "is unable to consent" is not sufficiently precise. Explicit reference should be made in this provision to the standards referred to in articles 3.4 and 3.5. The relationship between the provision for guardianship and the provision for involuntary treatment also needs to be clarified.

48. Australia notes that article 15.2 refers to review of involuntary commitment to a mental health facility by a "review body" which will not necessarily be a judicial body. While non-judicial bodies have a valuable role in this area, the provision as drafted may fail to reflect the right of any person deprived of liberty "to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if that detention is not lawful" (art. 9.4 of the Covenant on Civil and Political Rights). Australia would reject any such lowering of existing standards.

Article 16

49. The right to appeal to a court contained in this article may be interpreted in some legal systems as only a right to a more limited review than is contemplated by article 9.4 of the Covenant on Civil and Political Rights. It is therefore suggested that this provision should also include a right of direct recourse to the courts, in similar terms to article 15.2.

Article 17: Procedural rights of the patient

50. Australia notes that article 17.3. provides that the review body may refuse access to records to a patient and his or her representative where it "considers that this would cause serious harm to the patient's health or put at risk the safety of others". This is acceptable in principle to Australia; however, such decisions should be reviewable. The matters specified as reviewable in article 16.6 do not appear to include procedural decisons such as decisions to refuse access to documents. Similarly, article 17.7 requires the review body to set out its findings and give reasons for its decision, but this may not be interpreted as including its findings and decision on whether to give access to records. These rights should be explicitly provided for.

Article 18

51. The comments made on article 17.3 are also applicable to article 18.1 with regard to any restrictions on access to information.

Article 19: Criminal proceedings

52. Refer to comments on guidelines on criminal proceedings below.

Article 20

53. Australia views the effect and purpose of this article, concerning persons who are not mentally ill, as being insufficiently defined, and notes that the present draft appears to give legitimacy to the admission of persons who are not mentally ill to mental health facilities.

Article 21: Remedies

54. Australia notes that the present drafting of this article 21.1 refers to an entitlement for "every mentally ill person", which may confine the entitlement to a remedy to persons who are in fact mentally ill: namely, it fails to state a similar entitlement for persons wrongly and unlawfully classified or treated as mentally ill.

Article 24

55. The reference to "existing rights" may be taken to mean only rights presently recognized in national law or rights presently enjoyed in practice. Australia proposes therefore that the phrase should read "existing rights, including rights recognized in applicable international or national law ...".

56. The present draft refers to rights of "patients". The ambit of the principles is wider than rights of persons who are presently "patients" and this article needs to be amended to reflect this.

Guidelines on criminal proceedings

57. Guideline V states that where a person is found incapable of understanding the nature or object of criminal proceedings, or conducting or taking part in his defence, the proceedings shall be suspended and the court is to declare that the person is unfit to stand trial. However, it is not specified what the consequence of such a finding is to be.

58. Australia notes that some legal systems permit indefinite detention in a mental health facility as a result, without the procedures and safeguards generally applicable to involuntary commitment. It is considered that in some cases at least this may constitute a breach of article 9 of the International Covenant on Civil and Political Rights.

59. Guideline VIII provides that patients confined to a mental health facility "under the criminal law and proceedings" shall have substantially the same appeal and review rights as patients confined under civil law proceedings. It is not clear, however, that a person found unfit to stand trial can be regarded as included in the term "under the criminal law and proceedings". Further, this guideline refers to the rights of persons once they are confined in a mental health facility. It does not indicate whether and when persons found unfit to stand trial should be so confined, by what procedure or with what safeguards.

60. The approach Australia would recommend, in order to give effect to the presumption of innocence (art. 14.2 of the Covenant on Civil and Political Rights), is that persons found unfit to stand trial by reason of mental illness should be confined in a mental health facility only if they meet the requirements for civil commitment. This would be consistent with the provision of guideline X which applies the same requirement in respect of convicted persons.

AUSTRIA

[Original: English]
[3 January 1990]

Article 2

1. The definition of a "mental health practitioner" - particularly in respect of the obligatory placing in a mental health facility under article 15, paragraph 1 - would appear to be unduly all-embracing.

2. The definition of "mental health facility" focuses on the care and treatment of patients as the principal function of such an establishment. Therefore, the question arises as to whether an establishment for mentally ill who infringe the law falls under this category.

3. Granted that medical treatment of the mentally ill is of vital importance, the primary objective of such an establishment is to prevent the lawbreaker from committing punishable offences on account of his mental or psychic abnormality. Thus the application of the principles elaborated to such an establishment could be excluded (in this sense see art. 1, para. 1 of Recommendation R (83) 2 of the Committee of Ministers of the Council of Europe, dated 22 February 1983, concerning the legal protection of persons suffering from mental disturbances and placed in establishments). Such an exception would be appropriate in the eyes of the Austrian authorities, since the draft amounts to treating mentally ill lawbreakers in an equal manner as others in the mentally ill category (see Annex A, guideline VIII).

4. It also catches one's eye that the definition is obviously used in different senses. Articles 9 and 13 seems to apply to establishments for outpatients as well as for inpatients (art. 7, para. 2, and art. 15, however, seem to apply only to establishments for inpatients). This is where some clarification is desirable.

5. Finally, no distinction should be made between "mental illness" and "severe mental illness" (this definition is apparently considered necessary with respect to art. 15, para. 1). Such a (unnecessary) distinction would only lead to problems of definition.

Article 3

6. The basic rights and freedoms of the mentally ill are set out in this article. According to paragraph 4, every mentally ill person shall have the right to exercise all his civil, political, economic, social and cultural rights unless the court decides otherwise in relation to disposing capacity. These rights of the mentally ill person include the right to vote, the right to manage his own economic affairs and to control the disposition of his assets, and the right to appoint a representative of his choice to protect his interests.

7. This is not to assume that each person suffering from mental disorder should have the right to exercise all these rights, since the legal system has an obligation to protect the mentally ill from their abnormal behaviour. Thus, under Austrian law, those unable to conduct their business, including certain persons suffering from mental disorder or under the influence of alcohol, are, in particular, prohibited from concluding contracts and from marrying. This provision is in no sense a discrimination but seeks to protect the interests of the person concerned. It would not correspond to the reality of life to make the effectiveness of such legal acts dependent on - possibly even prior - court decisions. It should be clearly stated that limitations for the protection of those concerned - naturally with the possibility of legal scrutiny (also at a later stage) - should be admissible.

8. Mentally ill persons should be given rights according to the degree of their mental disorder, and this should be the criteria. Limitations of the mentally ill person's rights, according to this principle, should be expressly made clear in national legislation.

9. The examples of paragraph 4 seem to be arbitrary and should rather appear in the explanatory report.

10. Paragraph 5 - according to which the court shall appoint for a mentally ill person - in general terms and without distinction - a guardian (legal representative), where that person is found to be incapable of managing his own affairs - is to be rejected. In this context, a solution should be sought, which provides for appropriate measures to be taken by the court on behalf of the mentally ill person. The restraints on mentally ill persons to manage their own affairs should be adjusted, according to the pre-conditions to be defined under national law, to the actual state of the mentally ill.

Articles 10 and 11

11. In articles 10 and 11, the link between the terms "treatment" and "medication" (see also para. 8 of art. 12) seems to require clarification in the sense that it should be stated clearly that "medication" is a form of "treatment".

Article 12

12. With regard to the stipulation in paragraph 9 that a second professional opinion should be sought, this should only be dispensed with under the more precise condition of immediate danger. The general obligation of a second professional opinion under the vague pre-condition "whenever possible" could then be dropped.

Article 13

13. As a preventive measure designed to ensure the voluntary nature of admission to a mental health facility dealt with in this article, a written certificate should be required in which the persons who have informed the patient and been given his approval, confirm that the conditions under paragraph 3 are met. Such an approach could establish a sort of responsibility to ensure that patients are admitted to mental health facilities only with their full understanding and approval, without enjoying the guarantees under article 15.

Article 15

14. This provision concerns the obligatory admission to a mental health facility. Under paragraph 1, the person shall be admitted only if a mental health practitioner considers that there is, because of severe mental illness, immediate, serious danger or risk of danger for the mentally ill or another person and that the mentally ill refuses voluntary admission or is incapable of agreeing to it, provided that the treatment can only be carried out in a mental health facility. Whenever possible, this opinion should be confirmed by a second mental health practitioner.

15. There are considerable reservations on this provision since, under article 2, "mental health practitioner" does not only mean a medical doctor, but also a (clinical) psychologist, nurse, social worker or other appropriately trained and qualified person with specific skills relevant to mental health care. It would seem that more restrictive terms of admission, as far as the person committing someone to a mental health facility is concerned, are called for. The specific conditions for a committed person should at least be determined by a qualified specialist in psychiatry and neurology or a public health officer. Furthermore, a compulsory commitment

should not only be provided for on account of "severe mental illness" since this would lead to problems of definition and since it would seem to be sufficient that an individual is suffering from psychic disorder and is thus a serious danger to himself or others (in this sense, see arts. 3 and 4 of Recommendation R (83) 2 of the Council of Europe mentioned in para. 3 above). The formula contained in paragraph 1 - "shall be admitted or retained" - should be clarified in terms of the intentions of article 14, i.e. that the opinion has to precede, in any case, the involuntary admission.

16. In paragraph 2, it should be stated that the involuntary patient or, when this is not feasible on account of his mental disorder, his representatives and relatives should be informed as soon as possible on the reasons for his admission.

Article 16

17. Under paragraph 6, each "interested person" has the right of appeal, but this goes much too far (see, however, art. 4, para. 2 of the above-mentioned Recommendation R (83) 2 of the Council of Europe, under which each "interested person" is also granted the right of appeal).

18. Finally, under article 16, each patient (whether voluntary or involuntary) should enjoy the right to complain of involuntary treatment to the "review body".

Article 17

19. In paragraph 1, it is stated that the patient shall be entitled to appoint a representative of his choice (stating that he is entitled to appoint a legal representative is illogical since a legal representative is available by virtue of the law or appointed by a court or other competent authorities). However, the independent authority (court) has to appoint a lawyer or other qualified representative (free of charge), if the mentally ill so wishes and unless he himself authorizes a freely chosen representative. Since the appointment of a lawyer is not indispensable, there are no objections to this provision as (also in Austria) the planned establishment of a lawyer for patients, equivalent to a "other qualified representative", would have to be viewed as adequate representation free of charge of the mentally ill person. Paragraph 1 should in any case ensure that a representative of an involuntary patient should be appointed officially where the patient is incapable of expressing his wishes on account of his condition. Only under these circumstances can the patients' rights under article 16, paragraph 6, be guaranteed so that, also from this point of view, there would be no need to grant a right of appeal to "interested persons".

20. Paragraph 3 is questionable inasmuch as the inspection of the patient's records can be refused also to the representative of the mentally ill, where the independent authority (court) considers that this could cause serious harm to the patient's health. This reservation should be limited solely to the mentally ill.

21. In paragraph 4, more emphasis should perhaps be given to the question of the mentally ill being given a personal hearing by the independent authority (court) in any case (in a mandatory sense; the present text states that the patient and his representative shall be entitled to attend, participate in the hearing and be heard personally).

22. In paragraph 6, it is stated that the hearing shall be in public if the patient or his representative so request. This would appear to be a questionable procedure in such a delicate situation. The presence of the confidants of the mentally ill, if he so requests, would seem to be sufficient. A general public hearing (with media exposure) would hardly be justified.

Article 19

23. The application of the proposed principles in the case of criminal proceedings concerning a mentally ill person, who is consigned to a public institution for the mentally ill, does not seem to be appropriate. To apply these principles would mean that the rules would even apply in the case of provisional committal to a public institution for the mentally ill (instead of detention pending trial), during the period of detention (pending trial) in such an institution and in the case of executing the committal to a public institution for the mentally ill. In particular, the principles foreseen under article 15, paragraph 3, and article 16, paragraph 5, cannot be upheld in such cases.

24. With respect to the admission to an establishment for mentally ill who break the law, reference is made to the comments on article 2.

WORLD ASSOCIATION FOR PSYCHOLOGICAL REHABILITATION

[Original: English]
[2 and 20 November 1989]

General comments

1. Despite decades of neglect, it is heartening to note that a major effort is underway by the United Nations Commission on Human Rights to draft a basic charter specifying in detail the rights of hospitalized mental patients. Our World Association has been in the forefront, together with other international mental health organizations, to provide valuable input to this document.

2. But, as we have informed the Sub-Commission charged with drafting the report, we do not deem it sufficient to limit the provisions of the document solely to the rights of hospitalized mental patients. Therefore, we recommended that subsequent to its adoption by the United Nations, work should begin to enunciate a much broader framework of rights, to include aspects of prevention and rehabilitation, intensified research, expansion of community-based services, training of parents and professionals, and most importantly, provision for housing, jobs and support services.

3. In short, we must press relentlessly forward for a truly comprehensive approach to the full living needs of the mentally ill. We are also keenly aware that while legislation expresses intent and commitment, legislation per se is not self-enforcing. It must be accompanied by adequate appropriations and a suitable service infrastructure.

4. We consider it desirable and essential that, while work goes forward to perfect and finalize the present mandate of the Sub-Commission until its final, hopeful, adoption by the United Nations, preliminary thinking and

planning be initiated in the interim to go beyond the parameters of the present mandate (rights of hospitalized mental patients) to tbe broader issues of prevention, services and psychosocial rehabilitation.

This effort perhaps can go forward with the aid of relevant NGOs, parent and patient advisory organizations, the WHO and ILO.

5. The clear distinction drawn between Principles and Guidelines suggests that specific Guidelines await Regional meetings during the next few months so that adequate consideration can be given to different cultures, social and economic conditions, etc., so that the objective realities in different countries can be carefully taken into account.

6. We particularly underscore the importance of article 22 (p. 13) of the Palley Report, calling for National mechanisms to monitor compliance with national laws and regulations.

To this, we would add suggestions that:

(a) Relevant United Nations Specialized Agencies - WHO, ILO, UNESCO, or the Centre for Human Rights, be authorized and mandated to maintain ongoing oversight of implementation of approved United Nations resolutions and, with the assistance of experts from NGOs, legal and other advocacy organizations, and staff of Specialized Agencies, be in a position to assist national governments and ministries in the drafting of legislation and regulations;

(b) Governments be urged to assist parent and consumer advocacy organizations to fulfil their mandates in serving the mentally ill;

(c) Governments be requested to submit to the United Nations Secretary-General Annual Reports on Legislation and other measures taken in fulfilment of relevant United Nations resolutions.

Specific comments

7. With regard to ECOSOC report (E/CN.4/Sub.2/1988/23) dated 26 August 1988 by the Sub-Commission (Palley Report), page 12, article 18, we suggest the following revision to paragraph 2:

"2. All patients have a right to preservation of confidentiality of their medical records, subject only to exceptions made by a duly authorized court or by appriorate legislation".

8. We attach for information the text of the Declaration of Barcelona on the Rehabilitation and Human Rights of the Mentally Ill which was unanimously approved at the plenary closing session (11 October 1989) of the Second World Congress of the World Association for the Psychosocially Disabled, held in Barcelona, Spain:

"The World Rehabilitation Association for the Psychosocially Disabled,

Mindful of the fact that an estimated fifty (50) million human beings throughout the world, in both developed and developing nations, are afflicted by some form of serious mental disorder or disability,

Recognizing that the primary mission of the Association is to foster and encourage all effective measures designed to meet the basic human needs of the seriously mentally ill, especially the need for a comprehensive array of rehabilitation services to improve the personal, social and vocational functioning of these individuals,

Noting with concern that in many countries, including even those with a high level of industrial and financial capacity, a considerable proportion of the mentally ill populations fail to receive the human, informational data, technical training and financial support systems necessary to enable them to overcome their impaired functioning, reduce the possibility of relapse, thereby depriving them of the possibility of maximizing their potential to lead happy and productive lives or of contributing to the welfare, economic and social viability of their family, community and nation,

Further noting with approval the various Declarations, Resolutions, Conventions and Reports issued by the United Nations, its General Assembly, Specialized Agencies and and International Non-Governmental Organizations, including among others, those of the World Health Organization, the International Labour Organisation, the Economic and Social Council, the World Federation of Mental Health, the World Psychiatric Association, the World Association for Psychosocial Rehabilitation,

Singling out for special attention the instruments identified in the attached Appendix,

Aware that the implementation of the Rights and Principles specified in the actions taken by the aforementioned bodies urgently require all Governments to review and, where necessary, revise their national priorities, developments plans, legislation and expenditures to ensure an adequate level of psychosocial rehabilitation services to their mentally ill residents,

1. Declares that the mentally ill, as well as other vulnerable populations, have the right - and it shall be society's obligation to provide the resources and opportunities consistent with national capabilities - to enjoy a full life, economic security compatible with human dignity, as well as the right to share in the productive work of the community to the limits of their capabilities;

2. Pledges to marshall our utmost efforts to end the shameful conditions of homelessness of millions of mentally ill human beings cast adrift as a result of callous and indifferent public policies, or which stigmatize these human beings as being unworthy of the rights and benefits of a civilized society;

3. Further pledges to co-operate with, and call upon the United Nations, its Specialized Agencies, leaders of National Governments and relevant Ministries and Non-Governmental bodies to promote, approve and advocate policies consistent with the principles herein enunciated;

4. Instructs the Board of Directors of this Association to present this Declaration to the Secretary-General of the United Nations; the Secretaries-General of the Specialized United Nations Agencies; all Heads of State; Health, Finance and Development Ministries and delegates to the United Nations General Assembly."

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COMMISSION ON HUMAN RIGHTS
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HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

Principles and guarantees for the protection of persons detained on grounds of mental ill-health or suffering from mental disorder

Report of the Secretary-General

Addendum

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I. REPLY FROM JAPAN

[Original: English]
[5 January 1990]

A. General comments

1. Japan fully recognizes the need for principles and guarantees embodying international standards for the protection of the human rights of mentally ill persons. In this context, it considers the results of the work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which presented the draft body of principles, guidelines and guarantees, extremely valuable. Japan wishes here to make three general comments before entering upon a more detailed consideration of individual articles.

2. While this draft body of principles and guarantees is referred to as "guidelines" in the introduction, it appears at the same time to be given the status of "minimum standards" to be observed by States. Since there is diversity among countries in regard to legal systems and economic situations, it is more realistic that these principles should be purely guidelines showing the objectives to be aimed at by all countries. If the draft is characterized as "minimum standards", the wording and content of certain articles should be attenuated to give more flexibility, including the replacement of the word "shall" by "should".

3. The protection of the human rights of mentally ill persons is, naturally, the primary objective of the principles. However, protection of the rights of other citizens is no less important and should be equally guaranteed. It is proposed, therefore, that a clause should be inserted somewhere in the introductory part to the following effect: "With due consideration for the protection of the rights of other citizens".

4. While annex A provides for the criminal proceedings to be applied in the case of mentally ill persons accused of crimes, article 19, paragraph 1, provides: "These articles shall mutatis mutandis apply to mentally ill offenders who are admitted to a mental health facility." Japan finds the wording of the paragraph too vague to determine clearly the scope of such application, and it is doubtful whether various constraints and requirements of the administration of criminal justice are fully taken into consideration. Furthermore, the relationship between the principles and annex A is unclear. Certain amendments to article 19, paragraph 1, will therefore be proposed later.

B. Comments on individual articles

Article 2, third paragraph

5. It should be made clear that "mental health facility" does not include a facility for penal detention. According to the definition given in this paragraph, "mental health facility" means "any unit of an establishment or any establishment which as its primary function provides care and treatment for patients". Although it might reasonably be assumed that such a mental health

facility does not include any type of penal detention facility, it is desirable that greater clarity be attained by means of a definition of "mental health facility" which explicitly excludes any penal detention facility in order to preclude any possibility of other interpretations.

6. Mental health facilities which provide care and treatment only for out-patients should also be excluded from the definition.

7. The third paragraph of article 2 should therefore be amended as follows:

> "Mental health facility" means "any unit of an establishment or any establishment which as its primary functions provides care and treatment for patients, except the following facilities:
>
> '(a) Medical establishment whose primary function includes detention of defendants requiring medical treatment while awaiting trial or in which mentally ill persons requiring treatment serve all or part of their sentences;
>
> '(b) Training establishments for juvenile delinquents suffering from serious physical illness;
>
> '(c) Establishment exclusively for the care and treatment of out-patients.'"

Article 3, paragraph 5

8. The character of a "guardian" and the scope of the role to be played by a "guardian" are not defined as clearly as is desirable in this paragraph.

9. Furthermore, unless article 19, paragraph 1, which provides that "these articles shall mutatis mutandis apply to mentally ill offenders who are admitted to a mental health facility", is amended as proposed later, the relation between the role and responsibility of defence counsel and those of guardians in criminal proceedings will also be unclear. In order to avoid this, it is proposed that this paragraph be replaced by the following:

> "5. Where the court finds that a person affected by mental illness is unable to manage his or her own affairs, appropriate measures to ensure the protection of his or her interests should be taken."

Article 5, paragraph 3 (b) and (c)

10. Subparagraphs (b) and (c) should be merged in order to avoid duplication, as follows:

> "(b) Be encouraged to engage in active occupation suited to his social and cultural background and receive education and training designed to promote his rehabilitation and reintegration in the community. He should be properly remunerated for any work done."

Article 8, paragraph 1 (a)

11. This subparagraph should be amended as follows:

> "(a) Substantially the same standards as other ill persons; and".

Not all such standards will be applicable to mentally ill persons equally.

Article 9, paragraph 2

12. The word "regularly" should be replaced by the words "whenever necessary". Periodic inspection will not be necessary in every mental health facility.

Article 12

13. The title should be amended to read "Limitation on treatment".

Article 12, paragraph 1

14. This paragraph should be amended to read as follows:

> "1. No treatment should be given to a patient without the decision of an authorized practitioner that the treatment is in the best interests of the patient, that alternative forms of treatment as well as the adverse effects associated with such treatment have been fully considered and that the medication is essential for the patient's welfare."

In the treatment of mentally ill persons, it is not always possible to apply the rule of "informed consent". If a patient does not understand the nature of his illness, strict application of the rule of "informed consent" would make it practically impossible for him to receive appropriate treatment. Instead of "informed consent", the opinion of an authorized mental health practitioner should be required to ensure that treatment is necessary and adequate.

Article 12, paragraph 2

15. This paragraph should be deleted.

Article 12, paragraphs 3 and 4

16. Paragraphs 3 and 4 should be combined as follows:

> "3. Psychosurgery, sterilization, castration and treatments which are unusually hazardous or have irreversible effects, treatments which are not yet fully established by internationally accepted medical standards, clinical trials and experimental treatments should not be applied to any patient without a decision regarding the measures or treatments being reviewed and approved by an independent and impartial review body established by law."

The two paragraphs can be combined, since there is no substantial difference between the treatment not yet fully established by internationally accepted medical standards mentioned in paragraph 3 and the clinical trials or experimental treatment mentioned in paragraph 4.

Article 12, paragraph 7

17. This paragraph should be amended as follows if the amendment proposed by Japan to paragraph 1 is accepted:

> "Notwithstanding paragraph 1 above, treatments other than those referred to in paragraph 2 (former paragraphs 3 and 4) may be given for a period no longer than necessary to prevent immediate or imminent serious harm to the patient himself or to others without the decision of a practitioner, as provided in paragraph 1 above. If continued treatment under this paragraph should be considered necessary, then the provisions of paragraph 1 should be applied."

Article 12, paragraph 8

18. This paragraph can also be deleted if the amendment to paragraph 1 is accepted.

Article 12, paragraph 9

19. This paragraph can also be deleted if the amendment to paragraph 1 is accepted.

Article 12, paragraph 10

20. This paragraph should be amended to read as follows:

> "10. Any treatment given to a patient should immediately be entered in the patient's medical record."

Article 15, paragraph 1 (a) and (b)

21. The word "serious" should be deleted. Requiring the harm to "serious" is neither in the interests of the mentally ill persons nor in those of other citizens.

Article 15, paragraph 2

22. This paragraph should be amended to read as follows:

> "2. Where any observation or preliminary treatment is necessary to determine if the criteria set out in article 15, paragraph 1, are fulfilled, the patient may be admitted involuntarily for a short specific period established by law. The patient's family and representative, if any, should be informed of any admission without delay."

Preliminary treatment is not deemed to be necessary in all cases.

Article 16, paragraph 1

23. The following phrase should be added at the end of the paragraph: "unless the admission is for a short specific period established by law or the decision to admit is taken by more than two authorized mental health practitioners". If admission is for a short specific period, review by the review body should not be required. Review by the review body should be obligatory only when the

admission is to continue beyond the specific period. Similarly, when the opinions of more than two mental health practitioners are unanimous, review by the review body does not have to be obligatory.

Article 17, paragraph 1

24. In the second sentence, the words "the review body shall appoint a lawyer or other qualified representative free of charge" should be amended to read: "a lawyer or other qualified representative should, if possible, be appointed at reasonable cost". Appointment of a lawyer or other qualified representative free of charge will not be possible financially for all countries.

25. The following sentence should be added at the end of the paragraph:

> "A patient applying for release should have the rights stipulated in paragraphs 2 to 7."

Article 17, paragraph 2

26. At the end of the paragraph, the words "except the patient's record" should be added. The possible prejudice to privacy resulting from a knowledge of the patient's record should be taken into consideration.

Article 17, paragraph 3

27. At the beginning of the first sentence, the words "the patient's records and" should be deleted, for the same reason as that given for article 17, paragraph 2.

Article 18, paragraph 1

28. This paragraph should be amended to read as follows:

> "1. In addition to the right in relation to review proceedings conferred by article 17, paragraph 3, a patient or former patient should be entitled to be provided with a summary of his medical reports."

It is not always reasonable to require that a patient's or former patient's health and personal records be made available. Knowledge of the record can sometimes have adverse effects on the patient's mental condition.

Article 19, paragraph 1

29. This paragraph should be replaced by the following:

> "1. In the treatment of mentally ill offenders admitted to a mental health facility, the purport of each of the articles of the principles should be respected to the greatest extent possible without prejudice to the purport of criminal proceedings and of the admission."

30. Japan can in no way agree on the treatment of such offenders in the same manner as in the case of other mentally ill persons.

Annex A

Section I, paragraph 2

31. The words "necessary for the court to decide" should be inserted after "all relevant legal issues" so as to make the role of the psychiatric reports clear.

Section I, paragraph 3

32. It should be understood that the words "the right to an independent psychiatric examination" do not mean that the person concerned has the right to name a doctor of his own choice, because arbitrary nominations of doctors may prejudice the impartiality of a psychiatric examination.

Section III, paragraph 2

33. This paragraph should be amended to read as follows:

> "2. No person who is unable to testify because of mental illness should be compelled to do so during a criminal proceeding."

It would not be reasonable to require that no person affected by mental illness should be compelled to testify, regardless of the nature or degree of the illness.

Section V, paragraph 2

34. At the end of the paragraph, the words "unless it is evident that a trial that will not declare culpability is to be held" should be added. When a trial is evidently in the interests of the mentally ill person, the trial should be held.

Section VI

35. The words "On the basis of the principle nullum crimen sine mens rea" should be deleted, as they are unnecessary.

36. The words "or was unable to appreciate the criminal nature of his acts" should be amended to read "or was unable to understand that he was doing a wrong or wicked act". The capability to understand the criminality of his act should not be required.

Section VII, paragraphs 1 and 2

37. After the words "a decision by the court" (para. 1) and "otherwise established against him, the court" (para. 2), the words "or other competent authorities" should be inserted.

38. Paragraph 1 of article 15 of the draft principles cannot be so interpreted as to require that a decision to order involuntary admission be made by the court in every case. To ensure consistency with paragraph 2 of article 15, the words "or other competent authorities" should be inserted. While it is for the criminal court to decide whether a mentally ill offender

is guilty or not, when he is acquitted, his involuntary admission to a mental health facility should be subject to the normal administrative procedure, as in the case of ordinary patients.

Section VIII, paragraph 1

39. The words "by order of a court" should be replaced by the words "by order of a court or other competent authorities, in accordance with section VII, paragraph 1".

40. It is reasonable to require that a person who is acquitted because of failure to establish a material element of the offence be given the same rights as other involuntary patients. But it is unreasonable that a person who is acquitted on the ground of lack of criminal responsibility due to mental illness should be given the same rights as other ordinary involuntary patients.

Section VIII, paragraph 2

41. The words "confined to a mental health facility under the criminal law and proceedings" should be replaced by "referred to in paragraph 1 above", the reason being the same as in paragraph 1.

42. It is desirable to clarify the meaning of "appeal and review rights" and "civil law proceedings".

Section IX

43. These words "an ordinary" should be replaced by "a", because the meaning of "ordinary" is unclear.

Section X

44. After "at the end of" insert "serviture of" to make the meaning more precise.

II. REPLY FROM THE WORLD HEALTH ORGANIZATION

[Original: English]
[8 January 1990]

1. The World Health Organization 1/ has consulted with members of its panel of experts and non-governmental organizations with which it is in official relations regarding the United Nations draft body of principles on the rights of the mentally ill to be discussed at this working group. The statement below reflects the views so obtained.

2. In its previous submission to the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1988/WG.3/WP.3), WHO summarized the views of those consulted by it and concluded that the United Nations document should be a set of principles (and possibly guarantees), without the guidelines proposed by Mrs. Daes. A draft set of such principles was given in the WHO submission to the Sub-Commission. Despite this suggestion, the working group of the Sub-Commission, under the chairmanship of Mrs. Palley, has produced a revised document which leaves out the word "guidelines" from its title, but nevertheless contains guidelines in addition to principles and guarantees.

3. The recent consultation carried out by WHO has confirmed the previously stated position that the document would best be shortened considerably, so that it contains only succinct principles related to each of the subjects addressed in the existing articles as adopted by the Sub-Commission.

4. If, however, the working group wishes to pursue the course of producing a set of articles more along the lines of those submitted in the Sub-Commission's draft, the following points among those made by the non-governmental organizations and experts consulted would seem to be most salient.

Article 12

5. Article 12, paragraph 4, bars clinical trials and experimental treatments for involuntary patients or for voluntary patients without their informed consent. Such a clause would prohibit trying any new treatment on, say, a patient with severe dementia. Such treatments are becoming available and in some cases restore a competent level of mental functioning, albeit temporarily. Such treatment, before being widely recommended, would require clinical trials on people unable to give informed consent. Paragraph 4 would in that case read:

> "Clinical trials and experimental treatments shall never be carried out on involuntary or voluntary patients without their informed consent. Patients unable to give informed consent may only be admitted to a clinical trial if so approved by an independent authority."

1/ The issue of this document does not constitute formal publication. It should not be reviewed, abstracted or quoted without the agreement of the World Health Organization. Authors alone are responsible for views expressed in signed articles.

6. This article, or article 2 on definitions, should make it clear what is meant by treatment. The implication of the article is that it refers to specific treatments and not to treatment in general. Article 12, paragraph 8, lays down the need for an independent authority to authorize treatment given without consent. If a physician wishes to change an authorized treatment, for instance by changing the dose, or by giving a different medication, it is not clear if this would be allowed. It seems most sensible for a broad plan of treatment to be authorized and then the treating mental health practitioner would have power to work within that according to his clinical judgement. The opening word "Treatment", paragraph 8, would in the light of this have to be changed to "A prescribed plan of treatment", and the words "requested medication" at the end of the paragraph be changed to "prescribed plan".

7. There appears to be a fear amongst patient advocates that the provision of an opportunity for treatment without consent may lead some health practitioners to ignore a patient's wishes altogether. Confronted with the fact that treatment will be carried out against their wishes. patients may then wish to have some kind of say in how the treatment is given. The fact that such attention is given even though the patient is under duress could be included in the concerns of the independent authority mentioned in paragraph 8. This could be resolved if a new paragraph were added between existing paragraphs 8 and 9 stating that:

> "Where any treatment is prescribed without the patient's informed consent, every effort shall nevertheless be made to inform the patient about the nature of the treatment and any possible alternatives, and to involve the patient as far as practicable in the development of the prescribed plan."

Article 13 or 14

8. No definition is given of voluntary patient in the United Nations draft principles, although it was in the previous WHO submission. Although articles 3 to 11 deal with the rights of all mentally ill patients, whether voluntary or not, it has come to the attention of WHO, in reviewing legislation, that in some jurisdictions the rights of patients who are called voluntary may be curtailed. That is, having agreed to be admitted, they find they have agreed to give up certain rights. This seems undesirable, since, being voluntary, they then do not have the right of appeal or redress that is laid down for involuntary patients. A paradoxical position could arise, therefore, where a "voluntary" patient was worse off in terms of restriction of rights than an involuntary patient. If the liberty of voluntary patients is to be ensured, an extra paragraph would have to be added to article 14 as paragraph 1 (the existing text of article 14 becoming paragraph 2). The new paragrapph 1 would read: "1. Every voluntary patient shall have the same rights and liberties as other ill persons admitted to a hospital, which is not a mental health facility."

Article 15

9. A major problem arises with this article if the formulation of article 13 is accepted on voluntary admission. Article 13 requires that an informed consent be given for voluntary admission. This could be acceptable, but it should be noted that a considerable number of mental patients (both younger ones as well as those with, say, dementia) are unable, because of a confused

mental state, to give an informed consent; some would, however, benefit from hospital care and do not protest against admission. It would however be stretching the meaning of "imminent or immediate likelihood of harm to self or others" to invoke this as a reason to admit them involuntarily. It seems, therefore, that it is important to recognize that there are three groups of patients. The first group are patients who, although mentally disturbed, are capable of arguing cogently against being admitted. They may however be likely to harm others or themselves. The second group do not really express a wish to be admitted or treated and are unable to give an informed consent or an informed refusal. There is unfortunately a third group of mentally ill persons, thought to require admission but not consenting to or refusing admission, who may be difficult to place in either of the two groups. In the light of this it may be necessary:

(a) To broaden the conditions for voluntary admission by excluding the need for informed consent;

(b) To broaden the conditions for involuntary admission by allowing it if it is in the patient's best interest without reference to likely harm;

(c) Or to make separate provision for the first two groups of patients referred to above by having one clause for patients who refuse consent to admission and a second for patients unable to consent, instead of the clause in the present paragraph 1 (c) which includes both "refuses or is unable to consent".

10. If this latter option is taken, two paragraphs would have to be formulated in place of the existing paragraph 1, as follows:

> "A person who refuses consent to admission to a mental health facility, where it is considered necessary in accordance with the principle of the least restrictive alternative, or, having been admitted, refuses to remain in the facility, shall be admitted or retained in the facility involuntarily only if a mental health practitioner, and where possible a second mental health practitioner, considers that there is an immediate or imminent likelihood that the person, because of severe mental illness:
>
> "(a) Will cause serious harm to himself, and it is in the person's best interest to be admitted or retained; or
>
> "(b) Will cause serious harm to other people.
>
> "A person who, because of severe mental illness, is unable to consent to voluntary admission for treatment, which can only be carried out in a mental health facility in accordance with the principle of the least restrictive alternative, shall be admitted to or retained in a mental health facility involuntarily only if a mental health practitioner, and where possible a second mental health practitioner, considers that failure to admit for care and treatment would lead to a considerable deterioration of his condition."

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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Medium-Term Plan for the Period 1992-1997

Note by the Secretariat

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Introduction

1. In accordance with the relevant parts of the regulations and rules governing the programme planning, the programme aspects of the budget, the monitoring of implementation and the methods of evaluation (ST/SGB/PPBME Rules 1 (1987)), the note by the Secretariat regarding the draft programme on the promotion and protection of human rights of the medium-term plan for the period 1992-1997 is attached for review and comments by the Commission on Human Rights.

2. It should be recalled that upon the recommendation of the Committee for Programme and Co-ordination, the General Assembly, in its resolution 42/215, extended the current (i.e. 1984-1989) medium-term plan until 1991, on the condition that the next medium-term plan be improved in its format, content and presentation. Following further recommendations by the Committee in 1988, in the context of its review of the draft introduction to the next medium-term plan (A/43/329) and of the proposed calendar of consultations for the preparation of that plan (A/43/329/Add.1), the General Assembly, in its resolution 43/219 of 21 December 1988, took, inter alia, the following relevant decisions: the next medium-term plan of the United Nations shall cover the period 1992-1997; the intergovernmental bodies are invited, when considering in 1989 the pertinent portions of the proposed medium-term plan for the period 1992-1997, to give due attention to the most appropriate structure for the major programme or major programmes, programmes and sub-programmes submitted for their consideration, as compared with the current structure and in the light of an analysis of the objectives, trends and general orientations derived from the mandates of the intergovernmental bodies, to be provided by the Secretary-General.

3. The draft programme on promotion and protection of human rights of the next medium-term plan submitted in this document is divided into two main parts. The first part is entitled "General orientation" and is a proposed framework for the medium-term plan. The second part presents the programme "Promotion and protection of human rights" in terms of four sub-programmes, namely:

(1) Implementation of international instruments and procedures;

(2) Elimination and prevention of discrimination and protection of minorities and vulnerable groups;

(3) Advisory services, technical co-operation, external relations and publications;

(4) Research, studies and standard-setting.

After a review of the major programme on human rights of the current medium-term plan, the Secretariat has decided, at this juncture, to keep the four sub-programmes used currently. Depending, however, on the comments and proposals to be made by the Commission and on the policy decisions to be made by the Programme Planning and Budgeting Board in January-February 1990 during its central review of the submissions by all Secretariat units, the number of sub-programmes might be modified in the proposed medium-term plan for the

period 1992-1997 which will be submitted by the Secretary-General, through the Committee for Programme and Co-ordination and the Advisory Committee on Administrative and Budgetary Questions, to the General Assembly at its forty-fifth session (1990) for final consideration and approval.

4. The current medium-term plan does not include designation of priorities among the four sub-programmes of the programme. In accordance with the regulations and rules on programme planning, the Commission is to recommend priorities among the proposed sub-programmes for the medium-term plan for the period 1992-1997. The Commission may consider that among the four sub-programmes proposed for the forthcoming plan, sub-programme (1) "implementation of international instruments and procedures" be given priority. It should be noted that the objectives and strategies of the Secretariat outlined in all the proposed sub-programmes are interdependent and fully integrated in concept and implementation. In considering this issue of priority setting among sub-programmes, it should also be borne in mind that the medium-term plan can be revised every other year. Consequently the Commission will have the opportunity to revise the content and structure of the programme on promotion and protection of human rights as well as the priorities among sub-programmes every other year. In this connection, the attention of the Commission is drawn to the report of the Secretary-General on the in-depth evaluation of the programme on human rights (E/AC.51/1989/2) which was submitted to the Committee for Programme and Co-ordination at its twenty-ninth session. The report of the Secretary-General as well as the conclusions and recommendations of the Committee for Programme and Co-ordination will be submitted to the Commission at its forth-sixth session for further action, in particular in revising the content of the programme on the promotion and protection of human rights.

5. Recommendations for changes made by the Commission on Human Rights will be taken into account by the Secretary-General in revising the final draft of the plan to be submitted to the Committee for Programme and Co-ordination, the Economic and Social Council and the General Assembly in 1990. Such revision might also affect the formal presentation of the narrative within each sub-programme. As is the case with the programme budget, the approval of the medium-term plan is a prerogative of the General Assembly.

6. Bearing in mind the relevant provisions of General Assembly resolution 43/219, the Commission may wish to provide comments and proposals on:

(a) The objectives and strategies proposed for the forthcoming medium-term plan for the period 1992-1997 as well as the sub-programme structure;

(b) The priority among the proposed new sub-programmes in accordance with Regulations 3.15 and 3.16 of the PPBME Regulations and Rules and in the light of the relevant parts of the Secretary-General's draft introduction to the next medium-term plan (A/43/329);

(c) The new activities and the curtailments proposed for the forthcoming medium-term plan.

I. PROMOTION AND PROTECTION OF HUMAN RIGHTS: GENERAL ORIENTATION OF THE PROGRAMME

7. The Charter of the United Nations includes among the purposes of the Organization the achievement of international co-operation in solving problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. Article 13 of the Charter provides for the General Assembly to initiate studies and make recommendations for the purpose of promoting international co-operation in the economic, social, cultural, educational and health fields, and to assist in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

8. With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, Article 55 of the Charter entrusts the United Nations with the task of promoting:

(a) Higher standards of living, full employment, and conditions of economic and social progress and development;

(b) Solutions of international economic, social, health and related problems; and international cultural and educational co-operation; and

(c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

All members pledge themselves, under Article 56, to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

9. The aforementioned Articles of the Charter, together with policies and procedures subsequently established by United Nations organs and with the provisions of the human rights instruments promulgated by the United Nations, provide the essential framework for the human rights programme of the United Nations. In this way, international concern for human rights has been enlarged in its scope and entrenched in modern international law. Today, such concern has come to be shared throughout the international community and no State can avoid being held internationally accountable for the way it treats human beings, tested by reference to internationally proclaimed norms contained in human rights instruments.

10. The Charter's conception of the interrelationship between human rights, peace and development has been borne out by experience and will continue to guide the United Nations in its approach to human rights in the decade of the 1990s. There can be no lasting security or sustained economic and social progress without respect for human rights. The lessons of history have shown that numerous situations of tension and conflict have been rooted in disregard for the human rights of individuals, minorities, groups or entire peoples. Conversely, the steady advance of meaningful economic, social and technological development will not be assured, nor its fruits equitably shared, if it is not securely anchored in respect for human rights and fundamental freedoms.

11. In the coming decade, with the renewal of confidence in multilateralism and the lessening of divisive ideological conflicts which we are witnessing, the international community can be expected increasingly to turn to United Nations human rights organs such as the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities for peaceful and constructive solutions to human rights problems which might otherwise give rise to tensions. These organs can be expected to become more and more the focal point of international efforts to act to prevent violations of human rights and their consequences, to carry out research into emerging problems and to develop new international standards and means of implementation which merit the confidence of all. They can also be expected to raise basic questions about the achievements of the last 40 years, and how the challenges ahead can best be met, both in relation to the general human rights programme and in relation to specific subjects such as the fight against racism and racial discrimination.

12. The experience of the past few years has shown the immense range and complexity of the often interrelated issues brought to United Nations human rights organs for consideration and study. One of the main tasks of the United Nations in the coming years will be to bring into sharper focus the intrinsic connection between the determined pursuit of peace, the steady advance of development and the enhanced protection of human dignity. Our success in this matter will depend in large measure on the capacity of the Secretariat to play its role of constructive partner with Member States, as well as with non-governmental organizations.

13. It has also become increasingly clear that the main task before the international community in the coming years will be to make the rights and freedoms already laid down in the body of international human rights law a reality for everyone everywhere on earth. Thus, in parallel with its continuing efforts in the field of standard-setting and the priority attention devoted to the international implementation process, greater emphasis than ever before will be given to the requirements of national institution building and information/education.

14. Through the World Public Information Campaign for Human Rights launched by the General Assembly on 10 December 1988, the Centre for Human Rights will strive to increase world-wide public understanding and awareness of human rights and fundamental freedoms and will engage the complementary activities of concerned agencies in the United Nations system, Member States and non-governmental organizations. The centre will co-ordinate the activities for the Campaign within the United Nations system and will liaise with Governments, regional and national institutions, NGOs and concerned individuals.

15. At the same time, the human rights flowing from the Charter, the Universal Declaration of Human Rights, the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights and other international human rights treaties must be stressed. Emphasis will continue to be placed upon the universal ratification and implementation of the norms proclaimed by the United Nations and already agreed upon in principle. In this respect, Governments that evince a profound concern to meet the human rights aspirations of their citizens should be in a position to be able to count upon the international support and solidarity of the United Nations in setting up or strengthening national infrastructures for the promotion and protection of human rights. Such arrangements, provided within the context of

the revitalized programme of advisory services and technical assistance, will vary from country to country and would include training of government officials and administrators of justice, expert advice, and technical assistance, for instance, in the building up of law libraries and law faculties and in the drafting of legal texts in conformity with international standards.

16. The challenge that now faces the Organization is to pass from words to deeds, from the elaboration of rights to their realization. It will also be essential to develop national institutions and systems for the protection of human rights in every Member State. The overall objective for the 1990s, therefore, will be to endeavour to forge a truly universal culture of human rights comprising a framework for international law, national systems backed by advice and technical assistance, and an informed and well-balanced base of public opinion.

II. PROGRAMME: PROMOTION AND PROTECTION OF HUMAN RIGHTS

A. Sub-programmes

1. Sub-programme 1: The implementation of international instruments and procedures

(a) Legislative authority

17. The legislative authority for this sub-programme is Articles 1, 13, 55, 56 and 62 of the Charter of the United Nations. For regular supervisory procedures the authority is General Assembly resolutions: 2106 A (XX), 2200 A (XXI), 3068 (XXVIII), 39/46 and Economic and Social Council resolutions 1985/17 and 1988/4.

18. For procedures concerning alleged violations of human rights, the authority is Economic and Social Council resolutions 277 (X) and 474 A (XV), 728 F (XXVIII), 1235 (XLII) and 1503 (XLVIII), Commission on Human Rights resolution 8 (XXIII) and General Assembly resolutions 2106 A (XX), 2200 A (XXI) and 39/46.

19. For fact-finding procedures on country situations, phenomena of serious violations and other related mechanisms, the authority is General Assembly resolutions 33/173, Economic and Social Council resolutions 5 (I), 9 (II), 1235 (XLII), and Commission on Human Rights resolutions 8 (XXIII) and 20 (XXXVI).

(b) Objective

20. The objective of this sub-programme is:

(i) To ensure continuing implementation of international norms and treaties in the field of human rights including:

(a) the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol thereto;

(b) the International Convention on the Elimination of All Forms of Racial Discrimination;

(c) the International Convention on the Suppression and Punishment of the Crime of Apartheid;

(d) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(e) such other conventions dealing with human rights as may be adopted by the United Nations, including in particular the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and their Families.

(ii) To respond positively to petitions or appeals received by the United Nations.

(iii) To provide policy-making organs with the pertinent facts and analyses in order to assist in the consideration of situations of alleged violations of human rights, in the review of world-wide phenomena of especially serious violations and, in connection with the latter task, to respond to appeals regarding individual cases.

(c) Problems addressed

21. The United Nations has promulgated a veritable international code of human rights, including the conventions enumerated previously. It is widely recognized, however, that there remains a gap between these internationally recognized norms and their application in practice. The reasons for this are diverse. Many States have not yet subscribed to such internationally recognized norms. Where Governments have done so, they may not have the personnel or the expertise needed to integrate the provisions of conventions into their respective national systems; resources may be lacking. In some situations the rule of law is fragile. For these and other reasons, the need to promote the application of existing international norms remains an urgent one.

22. Individuals and groups often find need to address themselves to the United Nations to draw attention to problems they are encountering or to request the intercession of the United Nations so as to ensure respect for human rights and fundamental freedoms. It is important that the United Nations reacts adequately, promptly and effectively to such appeals.

23. Policy-making organs, when considering situations of alleged violations of human rights in certain countries or territories, require factual information and an analysis of the human rights aspect of the situation. This is also true with regard to widespread phenomena of serious violations. In these situations, the policy-making organs have found it necessary to respond to appeals regarding individual cases. Accordingly, procedures and mechanisms dealing with alleged violations of human rights to be applied by individual experts, committees or working groups mandated by policy-making organs have been a regular feature of the human rights programme and continue to be further developed.

(d) Strategies for the period 1992-1997

24. The strategies to be pursued are, in the first place, provided for within the relevant conventions themselves, particularly the procedures for examination of reports. Other strategies include the encouragement of further ratifications or accessions to the international instruments on human rights; the enhancement and deepening of the dialogue between the States parties to these instruments and the relevant monitoring bodies, such as the Committee on the Elimination of Racial Discrimination, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee against Torture or the Committee on the Rights of the Child; the promotion of further exchanges of experience among Governments on the application of international instruments and standards; and the improvement of United Nations procedures for monitoring States' compliance with their treaty obligations, particularly through the utilization of consolidated reporting guidelines and the computerization of the work relating to reporting of the treaty monitoring bodies. New treaties coming into force, such as that on the rights of the child, migrant workers or the optional protocol against the death penalty will require that new approaches be adopted.

25. The implementation of the Convention on the Rights of the Child will pose a new and in some ways different challenge to the United Nations. Information and expert advice will have to be mobilized from many different sources to support the work of the Committee which will, for the first time in the annals of the United Nations, be charged with promoting all the human rights of a specific group - the children of the world - and will assist in bringing about real changes in the way they live. New and imaginative methods of turning international norms into national realities will have to be developed.

26. The consideration of petitions is carried out in accordance with the procedure established by the competent organs, notably the Economic and Social Council resolutions 728 F, 1235 and 1503. Petitions are also handled in accordance with the procedures established under relevant international conventions such as the Optional Protocol to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

27. The strategies applied under procedures or mechanisms dealing with alleged violations of human rights or in the pursuit of contacts with Governments follow the specific mandate decided upon in each instance by the authorizing organ.

28. This sub-programme is assigned the highest priority.

2. Sub-programme 2: Elimination and prevention of discrimination and protection of minorities and vulnerable groups

(a) Legislative authority

29. The legislative authority for this sub-programme is Articles 1, 13, 55, 56 and 62 of the Charter of the United Nations; the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination (Assembly resolution 38/14); the International Convention on the Elimination of All Forms of Racial Discrimination (Assembly resolution 2106 A (XX));

International Covenant on the Suppression and Punishment of the Crime of Apartheid (Assembly resolution 3068 (XXVIII)); United Nations Declaration on the Elimination of All Forms of Racial Discrimination (Assembly resolution 1904 (XVIII)); Declaration on Social Progress and Development (Assembly resolution 2543 (XXIV)); Declaration on the Right to Development (Assembly resolution 41/128); and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (Assembly resolution 36/55); Economic and Social Council resolutions 5 (I) and 9 (II) and the Report of the Fifth Session of the Commission on Human Rights, paragraph 13.

(b) Objective

30. The objective of this sub-programme is to contribute to the realization of the Charter's commitments to the dignity and worth of the human person and to its undertaking to promote respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

(c) The problem addressed

31. The commitment to human dignity and equality and to non-discrimination is one of the pillars of United Nations human rights policy as contained in the Charter, the Universal Declaration of Human Rights, the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights and the various specific treaties against discrimination and resolutions of the General Assembly, Economic and Social Council and the Commission on Human Rights. Nevertheless, many are denied effective enjoyment of basic human rights through discrimination on the grounds of race, sex, language, or religion or because they belong to particularly disadvantaged groups. In some cases discrimination is overt. The apartheid régime, in which discrimination is a blatant component of law and social policy, is the most notorious example. In other cases discrimination is covert, often constituting an invidious part of society that can even go unnoticed by many. Finally, many are denied full enjoyment of their human rights because they belong to particularly disadvantaged groups or sectors of society which are the objects of discrimination or exclusion. Threats of tensions, conflicts and strife are present in all these instances as human beings demand respect for their inherent dignity. The very existence of discrimination preventing the full enjoyment of human rights and fundamental freedoms is a serious threat to the universal enjoyment of human rights and to the objectives of the United Nations in promoting economic and social development and international peace and security.

(d) Strategies for the period 1992-1997

32. The expansion and vigorous implementation of United Nations programmes and plans of action against discrimination and for tolerance will constitute the principal strategy. This includes the application of the Programme of Action of the Second Decade against Racism and Racial Discrimination, activities aimed at bringing an end to apartheid, efforts concerning the rights of migrant workers and their families and work regarding the rights of indigenous populations.

33. The causes and conditions leading to racism and intolerance will increasingly be the focus of research, as will new and emerging forms of discrimination. This will lead to the development of legislative and social tools better adapted to the fight against discrimination. Attention will be centred on developing models for the establishment of national institutions promoting tolerance and fighting discrimination and on preparing model national laws against discrimination. Efforts will be made to promote the establishment of national institutions and the adoption of model laws where needed to facilitate the exchange of experiences gained on the national level.

34. An effort of reflection can be anticipated designed to review more than 45 years of experience in the fight against racism and racial discrimination, and in particular apartheid, as well as the First and Second Decades against Racism and Racial Discrimination, to identify achievements and failures, to set guidelines for the future and to develop new techniques.

35. In implementing the programme against racism, substantive contributions will be called for from agencies and programmes, high level focal points in each agency will be identified, and the capacity and experience of non-governmental organizations utilized through activities of outreach and mobilization.

36. Efforts will continue to improve the methods and results of the activities against discrimination dealt with in the past and new efforts will be undertaken regarding emerging forms of discrimination.

37. As a follow-up to the adoption of the Convention on the Rights of All Migrant Workers and Their Families, research will continue into the situation, problems and means to promote respect for the rights of this especially vulnerable group. In addition, an expanded effort can be expected with regard to the rights of minorities, in particular with a view to identifying measures designed to bring peaceful solutions to minority problems. Furthermore, practical as well as theoretical efforts may be expected to address discrimination or intolerance based on religion or belief.

38. Growing attention will be paid to the human rights situation of such vulnerable groups as children (sale of children, child prostitution, exploitation of children, imprisoned children), and women subjected to prostitution or traffic of their persons. The implementation of existing international instruments will be strengthened and new ways will be sought to gather reliable information, identify problems and propose effective remedies both nationally and internationally. Similarly, the situation of indigenous populations, the basic standards needed to protect their rights as well as the appropriate mechanisms for doing so, will receive continued attention following the remarkable advances already made in this field.

39. Finally, more attention will be focused on discrimination against members of particularly disadvantaged and marginalized groups such as the extremely poor. The involvement of members of disadvantaged groups in identifying the conditions and factors, including respect for civil and political as well as economic, social and cultural rights, affecting their enjoyment of human rights and in developing programmes designated to enable them to overcome those factors will be essential.

40. In approaching these efforts on behalf of vulnerable groups, emphasis will be placed on opening and maintaining channels of substantive communication and exchange between each secretariat unit and between the various policy-making organs - for example, by establishing reciprocal observer status for representatives of organs dealing with similar issues. Similar efforts will be made to strengthen substantive communications and exchange between the United Nations and regional intergovernmental bodies dealing with human rights issues.

3. Sub-programme 3: Advisory services, technical co-operation, external relations and publications

(a) Legislative authority

41. The legislative authority for this sub-programme is Articles 1, 13, 55 and 56 of the Charter. In particular, for Advisory Services and Technical Assistance, General Assembly resolutions 217 D (III), paragraph 2; 795 (VIII), paragraph 2; 926 (X); 1905 (XVIII), paragraph 3; 3068 (XXVIII), paragraph 4; 32/123, paragraphs 2 and 6; 32/127, paragraph 2; 41/154 and 43/90; Economic and Social Council resolutions 5 (I), 9 (II), 1793 (LIV), paragraphs 2, 3, 5 and 6; 1923 (LVIII), paragraphs 1 and 2; and decisions 146 (LX), paragraph (b); and Commission on Human Rights resolutions 17 (XXIII), paragraph 5 (b); 7 (XXXII), paragraph 2; 1987/37; 1987/38. For External Relations, Publications and Documentation and the World Public Information Campaign for Human Rights, General Assembly resolutions 41/130; 42/118; 43/128 and Commission on Human Rights resolutions 1986/54; 1987/39; 1988/74 and 1989/53.

(b) Objective

42. The objectives of this sub-programme are: to provide practical training and opportunities for exchange of information and experience to government officials or other persons whose functions are related to the promotion and protection of human rights; to provide expert and technical assistance in the field of human rights to Governments which request such assistance; to increase public information and awareness of human rights and fundamental freedoms; to co-ordinate the World Public Information Campaign for Human Rights and, to that end, to engage the complementary activities of concerned agencies in the United Nations system. Member States and NGOs; to liaise, in the development and implementation of the campaign, with Governments, regional and national institutions, NGOs and concerned individuals; to disseminate the international instruments and standards on human rights to people throughout the world; and to publicize the activities of the United Nations in the field of human rights.

(c) Problem addressed

43. Government officials dealing with human rights questions, administrators of justice and law-enforcement officials are often in need of further training. For such persons training courses, expert advice or opportunities for the exchange of information or experiences through national, regional or international workshops may be needed. Governments wishing to set up or strengthen national infrastructures for the promotion and protection of human rights may require technical assistance.

44. It is frequently the case that international instruments and standards promulgated by the United Nations for the promotion and protection of human rights are not known to the people whose rights they are intended to protect. Knowledge of human rights and fundamental freedoms by all people is essential to ensure the ultimate success of the efforts of the United Nations towards the universal implementation of international human rights standards. Thus, the World Campaign of Public Information for Human Rights provides the United Nations and the international community with a unique opportunity to reach out to the people of the world with a human rights message and make known the international machinery available for the promotion and protection of those rights and freedoms.

45. Without adequate public understanding or support, the activities of the United Nations for the promotion and protection of human rights cannot realize the potential expected of them. The dissemination of information by all means available, including workshops, publications, etc. is therefore indispensable.

(d) Strategies for the period 1992-1997

46. During the period covered by the medium-term plan, efforts will be further enhanced to provide Governments, at their request, with technical assistance, for instance in developing national laws in keeping with international standards and strengthening national institutions, systems and infrastructures for the promotion and protection of human rights, as well as in incorporating the human rights component in an integrated approach to development strategies. Special attention will be given to requests for assistance in the field of human rights in countries which have experienced problems in the implementation of human rights standards, also in view of the priority attention that human rights organs, such as the Commission on Human Rights, and the General Assembly, have attached to such assistance. In this connection, specific training courses for government officials dealing with preparation and presentation of national reports to human rights supervisory bodies will be provided.

47. In this connection, it may be expected that during the medium-term period more national, regional and subregional workshops and training courses will be organized for administrators of justice and government officials engaged in the implementation of international conventions on human rights and that more countries in all regions of the world will develop forms of co-operation and assistance with the Centre for Human Rights, in keeping with their specific needs. It must also be reiterated that advisory services and technical assistance activities can be complementary to, but never a substitute for, investigations into allegations of human rights violations called upon by the competent legislative bodies.

48. In the field of external relations and within the framework of the activities for the World Public Information Campaign for Human Rights, efforts will be made to strengthen relations and co-operation with the United Nations agencies concerned and with the media, non-governmental organizations and academic institutions, so as to inform people world-wide of the goals and activities of the United Nations in this sector and also to draw upon their support and their assistance for the universal realization of human rights. The Centre will co-ordinate a programme of activities, including the holding of workshops, the publication and distribution of information and reference materials, etc., in all regions of the world and in a balanced, factual and

objective manner, in order to inform, educate and generate public understanding and support for the objectives of the United Nations in the field of human rights. This will be done in close co-operation with agencies of the United Nations system and the wider human rights community referred to above.

49. The dissemination of information on human rights will continue to place emphasis on the reproduction of the texts of international instruments, norms and standards on human rights in as many languages as possible and on making the translated texts widely available.

50. During the medium-term period new and more readable information materials (such as the Fact Sheet series, Newsletter and Bulletin), will continue to be issued in addition to the regular publications such as the Yearbook on Human Rights, the Official Records of the Human Rights Committee, and the Selected Decisions of the Human Rights Committee under the Optional Protocol. They treat specific human rights themes of topical interest in a practical and direct fashion and are intended for the public at large. Certain studies and reports to United Nations human rights bodies which might be of particular interest to the public will continue to be re-issued also in a more attractive form than the original mimeographed document.

51. Thus, through the World Public Information Campaign the United Nations will try to create and promote a universal culture of human rights. It will do so by increasing understanding and awareness of human rights and fundamental freedoms world-wide, as well as of the international machinery available for the promotion and protection of those rights and freedoms and the role of the United Nations to that end.

4. Sub-programme 4: Research, studies and standard-setting

(a) Legislative authority

52. The legislative authority for this sub-programme is Articles 13, paragraph 1 (a), (b) and 62 of the Charter, General Assembly resolutions 3218 (XXIX) and 41/120, Economic and Social Council resolutions 5 (I) and 9 (II), Commission on Human Rights decision at its fifth session (E/1371, para. 13), Commission resolutions 13 (XXXIII) and 17 (XXXVII).

(b) Objective

53. The objectives of this sub-programme are to study and carry out research on human rights issues for United Nations human rights organs, to elaborate international human rights standards for adoption by these organs and to review the implementation of certain standards.

(c) Problem addressed

54. Society constantly presents new problems whose human rights aspects need to be studied or dealt with on the international level. United Nations policy-making organs thus constantly mandate new areas for research. These can be on specific aspects of already well established rights, or on emerging problems with relatively unexplored human rights dimensions. In a rapidly evolving world, problems are often no sooner discovered on the national level than Governments, organizations and various sectors of society turn to the

United Nations for advice and guidance on their human rights aspects. In addition, in an increasingly interconnected world, events in areas not at first thought of as relevant to human rights are seen to directly affect the enjoyment of basic rights; research into these areas thus becomes necessary.

55. In addition, United Nations human rights organs review periodically the achievements of the human rights programme and areas in need of strengthening, and discuss directives for future activities. In this regard, they require the preparation of reports and the analysis and evaluation of information.

56. Finally, certain areas of priority are identified by policy-making organs for continuous review in order to ascertain whether international standards are being respected, to identify emerging problems and to determine if new standards or mechanisms are needed. In this regard, the collection and analysis of information and the establishment of dialogues with Governments are mandated. The international community requires that the standards set be the highest attainable and in accord with existing norms.

57. When human rights problems have been identified, the international community's response is to aim to develop standards laying down basic international norms guaranteeing respect for human rights or to develop new machinery to implement basic rights. These standards or mechanisms can deal with one particular problem or right or with the human rights of an entire social group.

(d) Strategies for the period 1992-1997

58. In the area of research and studies, basic research into such human rights as the realization of economic, social and cultural rights, the interrelated nature of respect for the various human rights, freedom of opinion and expression, and the right to a fair trial will continue. Research can be expected to expand into new areas such as the human rights aspect of bio-medical technology, discrimination against HIV-infected persons or people with AIDS, into areas having an impact on the enjoyment of human rights such as the external debt and readjustment policies, toxic waste and chemical weapons, and into such questions as the interrelationship between peace and human rights.

59. In addition, the gathering and analysis and the establishment of dialogues with Governments with regard to human rights in the administration of justice and respect for human rights during states of emergency will receive continued emphasis.

60. A concerted effort of reflection by Governments, non-governmental organizations, experts and the academic community into more than 45 years of effort at promoting respect for human rights can be anticipated with the objective of strengthening existing activities and identifying directions for future developments.

61. Research and studies will continue to be action-oriented rather than abstract. Planning and co-ordination will be improved so as to avoid duplication. Research and reference facilities of the Centre for Human Rights will be built up gradually in co-operation with the library and documentation services of the Secretariat.

62. Standard-setting will continue as mandated by policy-making organs. Such subjects as enforced or involuntary disappearances and the right to leave any country and to return to one's own country can be expected to be addressed. In addition, in the area of states of emergency and human rights, new standards will emerge relating to the declaration and to the application of states of emergency and respect for human rights, in particular, with regard to non-derogable rights.

63. Other topics for standard-setting will doubtless emerge from the research work currently being carried out or undertaken during the beginning of the period 1992-1997. New areas of standard-setting will evolve from the implementation of the Declaration on the Right to Development and the Commission on Human Rights search for criteria for identifying progress in the realization of the right to development.

64. The basic challenge to the Organization in the field of research, studies and standard-setting in human rights in the next decade will be to deal successfully with a growing range of interrelated and complex human rights issues touching almost all areas of human rights activities. This presupposes the availability of the specific types of resources, both human and material, needed to deal with such issues.

65. The effective use of staff resources often confronted with research tasks relating to the activities of the United Nations in human rights over the past 40 years, as well as into the detailed and extensive information submitted to the United Nations, make imperative the establishment of a computerized United Nations human rights data base. This data base would be updated continuously and access made available, as appropriate, to staff, Governments, specialized agencies, non-governmental organizations, academic institutions, the media and the public. This would contribute to a better understanding of United Nations work in human rights and make possible more efficient use of existing resources.

B. Organization

66. Intergovernmental review. The work of the Secretariat in this programme is reviewed by the Commission on Human Rights, which meets every year. The preliminary draft of this plan was reviewed at its forty-fifth session, in 1989.

67. Secretariat. The Secretariat unit responsible for this programme is the Centre for Human Rights, in which there were 45 professional posts authorized as at 1 January 1990.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND DEPENDENT COUNTRIES AND TERRITORIES

Letter dated 12 January 1990 from the Permanent Representative of the People's Republic of China to the United Nations addressed to the Secretary-General

1. The United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a resolution (1989/5) entitled "Situation in China" on 31 August 1989. The Chinese Government's position on the resolution has already been put forth in the statement issued by the spokesman of the Ministry of Foreign Affairs of the People's Republic of China on 2 September 1989. I wish to reiterate here that the Chinese Government firmly rejects the resolution and any other possible action taken pursuant to it for the reasons set out below.

2. The Chinese Government showed the utmost tolerance and restraint in face of the illegal demonstrations.

3. In April and May 1989, illegal demonstrations took place in China's capital, Beijing, lasting for nearly 50 days, and even Tiananmen Square, centre of the nation's political activities, was illegally occupied for a long period of time. The demonstrations were illegal because their organizers, in total disregard of the laws of the State and the relevant regulations of the Beijing municipal government on demonstrations, refused to go through the procedures of application and approval. Those demonstrations had grave consequences, badly disrupting public order, communications and transportation

in Beijing and its residents' normal life, and seriously interfering with the normal activities of the Government and even the activities of the official visit of an important State guest. In the mean time, the Chinese Government always exercised great restraint in an effort to solve the problem through persuasion and guidance. In mid-May, when some students staged a hunger strike at Tiananmen Square, the Chinese Government did its best to mobilize various departments to provide them with medical care, medicine, food and other materials, thus having protected their health and the safety of their life.

4. The imposition of martial law in Beijing was entirely necessary and in line with the provisions of the Constitution of the People's Republic of China.

5. The tolerance and restraint shown by the Chinese Government towards the above-mentioned illegal demonstrations failed to obtain a due response; the turmoil went from bad to worse, and ever more violent were the various activities hostile to the Chinese Government and aimed at subverting the Government of the People's Republic of China and the socialist system of China, activities supported and instigated by foreign forces. At such a critical moment, the Chinese Government could not but adopt the necessary measures. The State Council of the People's Republic of China decided, in accordance with clause 16, article 89, of the Constitution, to impose martial law in parts of Beijing, starting from 20 May. This decision, which was taken for the purpose of maintaining public order, protecting citizens' life and securing State property against any encroachment, was entirely necessary and legitimate.

6. The facts of the past period of over seven months have shown that the imposition of martial law in parts of Beijing was entirely justified. It quickly and effectively checked the turmoil and quelled the anti-Government rebellion in Beijing. It has not only maintained tranquillity in the capital, but has also safeguarded the security of the People's Republic of China. Now the situation in Beijing and the whole country has become stable, social order has returned to normal, production and life are in good order and the task of imposing martial law has been successfully fulfilled. Under such circumstances, the State Council of the People's Republic of China, in accordance with the provisions of clause 16, under article 89 of the Constitution, issued an order on 10 January 1990 lifting the martial law imposed in parts of Beijing as of 11 January 1990. This shows once again the determination of the Chinese Government to adopt timely measures to restore the normal life of society in accordance with the development of the situation.

7. The Chinese Government's actions to put an end to the turmoil and quell the rebellion were justified and legitimate.

8. After the declaration of martial law, the Chinese Government continued to use persuasion through various channels, expressing the hope that the trouble-makers would adopt a rational attitude, stop the turmoil and let public order be restored. However, far from diminishing, the anti-Government turmoil, instigated, incited and manipulated by hostile forces both at home and abroad, became all the more flagrant. On 3 June, the nearly two-month-long turmoil escalated abruptly into a rebellion designed to overthrow the Government by resorting to violence and terrorist means. Driven beyond forbearance, the Chinese Government could not but take decisive measures to

quell the rebellion in order to maintain law and order and protect the life and property of the general public. This was absolutely necessary, justified and legitimate.

9. However, some people have gone so far as to describe the above-mentioned actions by the Chinese Government as armed suppression of a peaceful, pro-democracy movement. This is a slander which ignores facts, confounds right and wrong and involves ulterior motives. The fact is that, during the anti-Government rebellion on 3 and 4 June 1989, a handful of political conspirators gathered a group of hooligans to savagely use violence against the army and the public security personnel who were enforcing martial law under orders. Using sticks, daggers, Molotov cocktails, guns and other lethal weapons, they beat military personnel and burned military vehicles, thus causing serious casualties on the army and the destruction of many military vehicles. Moreover, the ruffians, in disregard of laws and regulations, attacked the headquarters of the Central Committee of the Communist Party of China, the State Council and some other important government institutions. This was by no means a "pro-democracy movement" or a "peaceful demonstration". Rather, it was a rebellion aimed at subverting the legal Government of China and the socialist system stipulated in the Chinese Constitution. It is an obligation of any responsible Government to quell rebellion, maintain public order and social stability and safeguard the sanctity of the Constitution. This is an indispensable and just action aimed at protecting the legal rights of citizens.

10. What needs to be pointed out is that, in the whole process of quelling the rebellion, a total of nearly 300 people died, including military personnel of the martial law enforcement troops. Besides ruffians, a small number of onlookers were shot accidentally, which is regrettable, and the Government has dealt appropriately with this matter.

11. The so-called "Tiananmen bloodbath" is sheer fabrication. After the quelling of the rebellion, such rumours as "Tiananmen bloodbath" or "Tiananmen massacre" were produced by some Western mass media. But these rumours have long been punctured by facts. Hou Dejian, a composer from China's Taiwan Province who was among the last to leave Tiananmen Square when troops began their clearing operation in the early morning of 4 June, later confirmed that, during the whole process of departure from the Square, he did not see any student, citizen or PLA soldier being killed or any tank or armoured vehicle rolling over crowds of people. Liu Xiaobo, Zhou Duo, Gao Xin and some students who were with Hou Dejian at the time also confirmed this fact to journalists. All this has forcefully shown that the so-called "Tiananmen bloodbath" was fabricated by people with ulterior motives.

12. It is entirely defensible to punish criminals who have violated the criminal law in accordance with the law.

13. Following the quelling of the rebellion, the Chinese Government has repeatedly stated that it will not inquire into the responsibilities of those students and citizens who were ordinary participants in marches, demonstrations and hunger strikes. However, during the turmoil and rebellion, a handfull of people were engaged in organizing and plotting conspiracies or in such violent acts as beating, smashing, looting, burning and killing, thus violating the Chinese criminal law. Naturally, these criminals should be

brought to justice, which is unobjectionable. Punishment of criminals in accordance with the law is a matter within the realm of a country's sovereignty, and no foreign country or international organization has the right to interfere in it.

14. The use of the United Nations forum by a small number of Western countries to interfere in China's internal affairs constitutes a complete violation of the purposes of the United Nations Charter and the norms governing international relations.

15. After the quelling of the rebellion by the Chinese Government, some Western countries, ignoring facts and relying on nothing but distorted reports and misinformation, made arbitrary accusations against and applied pressures on the Chinese Government. They even went so far as to give open permission and support to criminals wanted by the Chinese public security organs in carrying out activities against the Chinese Government, and thereby interfered in China's internal affairs. To find a pretext for their unjust acts, they slandered China on the so-called human rights issue. This is the background against which members of some Western countries on the Sub-Commission on Prevention of Discrimination and Protection of Minorities plotted the adoption of the resolution on "Situation on China". They even altered the normal voting procedure of the Sub-Commission, thereby imposing their own will on the Sub-Commission to serve their political aims. This is a serious violation of the purposes and principles of the United Nations Charter. Such erroneous acts, if allowed to continue, will certainly cause even greater damage to the reputation of the United Nations and its human rights institution.

16. I am hereby instructed to request Your Excellency to distribute this letter as an official document of the United Nations Commission on Human Rights.

(Signed) Li Luye
Ambassador
Permanent Representative

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